

***United States Court of Appeals  
for the Second Circuit***



**APPENDIX**





77-1385

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UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

DOCKET No. 77-1385

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UNITED STATES OF AMERICA,

Appellant,

- against -

CANDIDO NATAL RIQUELMY and  
FELIX LOPEZ,

Appellees.

---

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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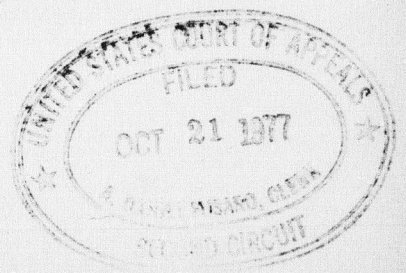
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APPELLANT'S APPENDIX

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DAVID G. TRAGER,  
United States Attorney,  
Eastern District of New York.



PAGINATION AS IN ORIGINAL COPY



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THE APPLICABLE DOCKET ENTRIES SHOW, IN SECTION V, ANY OCCURENCE OF EXCLUDABLE DELAY PER 18 USC § 3161(n)

| IV. PROCEEDINGS (continued) |                                                                                                                                         | PAGE TWO        |                | V. EXCLUDABLE DELAY |                | LETTER CODES                                                                                                        |  |
|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|-----------------|----------------|---------------------|----------------|---------------------------------------------------------------------------------------------------------------------|--|
| DOCUMENT NO.                |                                                                                                                                         | Actual Date (A) | Excl. Date (B) | LP Code (C)         | Total Days (D) | For Excluding Periods of Inadmissible Delay Per 18 U.S.C. 3161(n)                                                   |  |
| 77                          | Letter filed and ret'd to Chambers from counsel for the Deft, Stephen Laifer, Esq.                                                      |                 |                |                     |                | A. Examination or hearing for mental or physical competency (18 U.S.C. 4244)                                        |  |
|                             | Before Costantino J - case called for trial - deft & atty present. adjd to May 19, 1977.                                                |                 |                |                     |                | B. NARA Submission (28 U.S.C. 2602)                                                                                 |  |
| 77                          | Before Costantino J - case called - motion to suppress - hearing begun - hearing concluded - decision reserved - all briefs by 5-19-77. |                 |                |                     |                | C. State or Federal trial on other charges                                                                          |  |
| 77                          | Govt's memo in opposition to defts motions to suppress filed and forward to chambers.jlj                                                |                 |                |                     |                | D. Intermediary Appeals                                                                                             |  |
| 77                          | Defts Memo filed in opposition to motion to suppress.                                                                                   |                 |                |                     |                | E. Hearings on pretrial motions                                                                                     |  |
| -77                         | Before COSTANTINO J - Case called - adjd for trial without date.                                                                        |                 | 5-19-77        |                     | I              | F. Transfers from other districts (see U.S.C. P. Rule 20, 21 & 40)                                                  |  |
| 77                          | Before Costantino J - case called & adjd to July 18, 1977 on motion to suppress & for trial.                                            |                 |                |                     |                | G. Defendant Motion to adjourn trial (30 days in continuance per 3161(n) (1) (B))                                   |  |
| 77                          | Before Costantino, J.- Case Called. Deft. & Counsel present. Speedy Trial rule waived and adjd. to 9.19.77 for Trial.                   |                 |                |                     |                | H. Miscellaneous Proceedings: Procession or Release, Revision, Disposition, Satisfaction                            |  |
| 77                          | By Costantino, J-Order dtd 8/3/77 filed re that the deft's motion to suppress the heroin is granted.jlj                                 |                 |                |                     |                | I. Prosecution delayed by mutual agreement                                                                          |  |
| 77                          | Govts Notice of appeal filed - docket entries and duplicate of notice mailed to the court of appeals                                    |                 |                |                     |                | J. Unavailability of defendant or counsel witness                                                                   |  |
| 77                          | Notice of ordering of partial transcript filed.jj                                                                                       |                 |                |                     |                | K. Period of mental or physical incompetency of defendant as used trial                                             |  |
| 77                          | Before Costantino J - case called - deft & atty present - adjd to Oct. 3, 1977 for report.                                              |                 |                |                     |                | L. Period of NARA Commitment or Treatment                                                                           |  |
| 77                          | Order filed received from the Court of Appeals that the record be filed on or before September 28th, 1977.                              |                 |                |                     |                | M. Suppressing indictment and/or new charges                                                                        |  |
| 77                          | Sten. transcript dtd 5-9-77 filed. mg                                                                                                   |                 |                |                     |                | N. Defendant awaiting trial of Co-defendant when no severance has been granted                                      |  |
| 77                          | Record on appeal certified and handed to Tony Schall, AUSA. for delivery to the court of appeals.                                       |                 |                |                     |                | O. Continuance Granted per 3161(n) (2) (i.e. ends of justice or complexity of case outweighs Government's interest) |  |
| 77                          | Acknowledgment filed received from the court of appeals for receipt of record on appeal.                                                |                 |                |                     |                | P. Time between guilty plea and plea withdrawn                                                                      |  |
| 77                          | Before COSTANTINOJ-Case called. Adj'd to 12-5-77 for report. mg                                                                         |                 |                |                     |                | Q. Grand Jury indictment returned per 3161 (n)                                                                      |  |

| FINE AND RESTITUTION PAYMENTS |             |      |                |             |
|-------------------------------|-------------|------|----------------|-------------|
| RECEIPT NUMBER                | C.D. NUMBER | DATE | RECEIPT NUMBER | C.D. NUMBER |
|                               |             |      |                |             |
|                               |             |      |                |             |
|                               |             |      |                |             |
|                               |             |      |                |             |



A 3

CRIMINAL DOCKET - U.S. District Court

PETTY OFFENSE PO ☐ JUDGE/MAGISTRATE Assigned U.S. vs. **77CR 172**

MAJOR OFFENSE MO **0718**

WISDOMSEANOR MIB ☐ **207** 1 Dep./Sentence

FELONY Fel ☒ District Office

CANDIDO NATAL RIQUELMY (LAST, FIRST, MIDDLE)

Case Filed Mo. **3** Day **28** Yr. **77** No. of Dots **3** Docket No. **172** Div. **2**

U.S. MAG. CASE NO. **77 M 652**

BAIL - RELEASE

☐ AMT ☐ Fugitive ☐ Pers. Recog. ☐ PSA

☐ Bail Not Made ☐ Collateral ☐ 2nd Prry Cust. ☐ Other

☐ Status Charge (See Docket)

U.S. TITLE/SECTION OFFENSES CHARGED ORIGINAL COUNTS

21:841(a)(1)846 Did conspire to possess with intent 3

18:1952(a)(3) & 2 to distribute heroin and did travel in i.c.c. to carry on of unlawful activities

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began High Risk Date **3-28-77** INDICTMENT ☒ Information ☐ 4/17/77 TRIAL ☐ Trial Set For **5-9-77**

Summons Served Indict. Waived ☐ 1st Plea ☐ NG ☐ G ☐ NOL

First Appearance **3-17-77** In Charging District ☐ Superseding ☐ Indict/info ☐ Final Plea ☐ NG ☐ G ☐ NOL

TRIAL ☐ Trial Began ☐ Trial Ended

SENTENCE ☐ On Gov't Motion

MAGISTRATE

Search Warrant ☐ Issued ☐ Return ☐ Summons ☐ Issued ☐ Served ☐ Arrest Warrant Issued ☐ COMPLAINT ☐ OFFENSE (In Complaint)

DATE **3-17-77** INITIAL/NO. **ASC/07AE**

INITIAL APPEARANCE DATE **3-28-77**

PRELIMINARY EXAMINATION ☐ REMOVAL HEARING ☐ WAIVED ☐ NOT WAIVED ☒ INTERVENING INDICTMENT

OUTCOME ☐ DISMISSED ☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT ☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW **ASC 07AE**

U.S. Attorney or Asst. **Ronald Russo**

ATTORNEYS **Stephen Laifer** 166 Montague St. Bklyn, NY. UL 5-8855

Defense: ☐ C/g ☐ Ret ☐ Waived ☐ Self ☐ None / Other ☐ Geo ☐ Co

\* Show last names and suffix numbers of other defendants on same indictment/information:

**EDDIE NATAL RIQUELMY 1; LOPEZ 3**

DATE (DOCUMENT NO.) PROCEEDINGS

3-22-77 Deft. signed Magistrate Bond - \$50,000 Secured by lien 603 Wilson Avenue, Brooklyn, NY and 398 Evergreen Avenue, Brooklyn, NY. Deft. released - 3/23/77

3-28-77 Before EHREIN J - Indictment filed.

4-5-77 Before Costantino J - case called - deft & atty present - Deft arraigned and each enter plea of not guilty - case set down for trial on May 9, 1977.

4-6-77 Copy of letter filed dated 4-4-77 from Rhonda Fields Asst. U.S. Atty to Stephen Laifer, Esq. received from Chambers.

4/22/77 Copy of letter of Rhonda Fields to David Jacobs dtd 4/21/77 filed re in receipt of message dtd 4/15/77 requesting certain discovery etc. JLJ

4.27.77 Notice of Motion for an Order suppressing certain statements made by the deft. etc. returnable 5.9.77 at 10:00 A.M. filed and forwarded to Chambers.

4.27.77 Notice of Motion for an Order suppressing all evidence seized here etc. returnable 5.9.77 at 10:00 A.M. filed and forwarded to Chambers.

EXCLUDABLE DELAY (a) (b) (c) (d)

FORM AO-256



AJ 4

OFF SITE THE APPLICABLE DOCKET ENTRIES SHOW, IN SECTION V, ANY OCCURENCE OF EXCLUDABLE DELAY PER 18 USC § 3161(P)

| DATE     | IV. PROCEEDINGS (continued)                                                                                | PAGE TWO | V. EXCLUDABLE DELAY  |                      |                      |                | LETTER C |
|----------|------------------------------------------------------------------------------------------------------------|----------|----------------------|----------------------|----------------------|----------------|----------|
|          | (DOCUMENT NO.)                                                                                             |          | Excludable Delay (a) | Excludable Delay (b) | Excludable Delay (c) | Total Days (d) |          |
| 1/18/77  | Govt's memo in opposition to defts' motions to suppress filed and forward to chambers.jlj                  |          |                      |                      |                      |                |          |
| 5-19-77  | Defts Memorandum filed and forwarded to Chambers                                                           |          |                      |                      |                      |                |          |
| 5-19-77  | Before Costantino J - case called for trial - adjd without date.                                           |          |                      |                      |                      | 5-19-77        | I        |
| 5-31-77  | Before Costantino J - case called & adjd to 7-18-77 for trial and suppression motion.                      |          |                      |                      |                      |                |          |
| 8/3/77   | By Costantino, J-J Order dtd 8/3/77 filed re that the deft's motion to suppress the heroin is granted.jlj  |          |                      |                      |                      |                |          |
| 8-1-77   | Govts notice of appeal filed - docket entries and duplicate of notice mailed to the c of a                 |          |                      |                      |                      |                |          |
| 11/13/77 | Notice of ordering of partial transcript filed.jj                                                          |          |                      |                      |                      |                |          |
| 11-19-77 | Before Costantino J - case called - deft & atty present - adjd to Oct 5, 1977 for report.                  |          |                      |                      |                      |                | T        |
| 11-22-77 | Order filed received from the Court of Appeals that the record be filed on or before September 28th, 1977. |          |                      |                      |                      |                |          |
| 11-28-77 | Sten. transcript dtd 5-9-77 filed. mg                                                                      |          |                      |                      |                      |                |          |
| 11-28-77 | Record on appeal certified and handed to Tony Schall AUSA for delivery to the court of appeals.            |          |                      |                      |                      |                |          |
| 12-5-77  | Acknowledgment filed received from the court of appeals for receipt of record on appeal.                   |          |                      |                      |                      |                |          |
| 12-5-77  | Before COSTANTINO,J-Case called. Adj'd to 12-5-77 for report. mg                                           |          |                      |                      |                      |                |          |

| FINE AND RESTITUTION PAYMENTS |                |             |      |                |             |
|-------------------------------|----------------|-------------|------|----------------|-------------|
| DATE                          | RECEIPT NUMBER | C.D. NUMBER | DATE | RECEIPT NUMBER | C.D. NUMBER |
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|                               |                |             |      |                |             |
|                               |                |             |      |                |             |
|                               |                |             |      |                |             |

For identifying Purpose of Excludable Delay Per U.S.C. 3161(P)

A. Summary hearing to mental or physical condition of defendant.

B. NARA Review (28 U.S.C. 200)

C. Status of Pre-arrest or physical condition.

D. International Agreements.

E. Hearings of pre-arrest condition.

F. Transfers of other cases (per F.R.C.P. Rule 20.4 & 40)

G. Defendant's own motion to adjourn. For up to 30 days in substance.

H. Identification of Proceedings: Pre-arrest, Pre-arrest, Pre-arrest, Pre-arrest, Pre-arrest.

I. Proceedings for the purpose of the defendant's own motion.

M. Unavailability of defendant or necessary witnesses.

N. Period of time or physical condition of defendant, stated in the record.

O. Period of NARA Review (28 U.S.C. 200)

P. Summary hearing to mental or physical condition of defendant.

R. Defendant's own motion to adjourn. For up to 30 days in substance.

T. Continuance Granted (3161(P))

U. Time for guilty plea or verdict.

W. Grand Jury Subpoena (3161(P))



A 5

CRIMINAL DOCKET - U.S. District Court

PETTY OFFENSE PO ☐ JUDGE/MAGISTRATE Assigned U.S. 77CR 172

OTHER MINOR OFFENSE MO ☐ 0718

OTHER MISDEMEANOR MIO ☐ 208 1

FELONY Fel ☒ Disposit. Office

Case Filed Day 28

No. charges 77

Cost at No. 172

U.S. TITLE/SECTION 21:841(a)(1)846, 18:1952(a)(3) & 2

OFFENSES CHARGED Did conspire to possess with intent to distribute heroin and did travel in i.c.c to carry on unlawful activities

ORIGINAL COUNTS 3

U.S. MAG. CASE NO. 77 M

BAK. RELEASE

AMT ☐ Fugitive ☐ Par. Rec. ☐ PSA ☐ 10000 ☐ 10% Depos ☒ Surety Bond ☐ Collateral ☐ 3rd Pny Cost ☐ Status Changed (See District)

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began 3-17-77

INDICTMENT Information ☐ High Risk Date 3-28-77

ARRAIGNMENT 4/5/77

TRIAL Trial Set For 1/5/77

U.S. Custody Began 3-17-77

Indict. Waived ☐ Superseding Indict/Info ☐ In Charging District

1st Plea 4

Final Plea

Voir Dire ☐ Trial Began ☐ Trial Ended ☐ Disposition of Charges ☐ Convicted ☐ Acquitted ☐ Dismissed ☐ On Government's Motion

U.S. Attorney or Asst. Ronald G. Russo

ATTORNEYS Julian Linker, Esq. 225 B'way New York, NY

DEFENSE: ☐ CJA ☐ Ret. ☐ Waived ☐ Set. ☐ None / Other. ☐ PG ☐ CO

Search Warrant Issued ☐ Return ☐ Summons Issued ☐ Served ☐ Arrest Warrant Issued ☐ COMPLAINT 3-17-77 ASC/07AE

OFFENSE (In Complaint) Possession with intent to distribute heroin. T-21 USC Section 841

OUTCOME: ☐ DISMISSED ☐ HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT ☐ HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW

ASC 07AE

\* Show last names and suffix numbers of other defendants on same indictment/information.

EDDIE NATAL RIQUELMI 1; ~~KEENE~~ CANDIDO NATAL RIQUELMI 2

| DATE    | (DOCUMENT NO.) | PROCEEDINGS                                                                                                                                | EXCLUDABLE DELA (IN) (IN) (IN) |
|---------|----------------|--------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------|
| 3-18-77 |                | Bail made - \$100,000 secured by deed to premises - 144 Suydam Street, Brooklyn, New York.                                                 |                                |
| 3-28-77 |                | Before CHREIN J - Indictment filed.                                                                                                        |                                |
| 4-5-77  |                | Before Costantino J - case called - deft & counsel present - deft arraigned & enters a plea of not guilty - trial set for May 9, 1977      |                                |
| 4-7-77  |                | Notice of appearance filed                                                                                                                 |                                |
| 4/19/77 |                | Copy of letter filed to Mr. Linker, Esq. from AUSA - Fields, re: enclosure of information concerning discovery.                            | t.1                            |
| 4.27.77 |                | Notice of Motion for an Order suppressing all evidence seized herein etc. returnable 5.9.77 at 10:00 A.M. filed and forwarded to Chambers. |                                |
| 5-12-77 |                | Before Costantino J - case called for trial - deft & counsel present - adjd to May 19, 1977.                                               |                                |
| 5-21-77 |                | Before Costantino J - case called - motion to suppress hearing begun - hearing concluded - decision reserved.                              |                                |
|         |                | <del>subject</del> All briefs by 5-19-77                                                                                                   |                                |



6

NOTE THE APPLICABLE DOCKET ENTRIES SHOW, IN SECTION V, ANY OCCURENCE OF EXCLUDABLE DELAY PER 18 USC § 3161(h)

| IV. PROCEEDINGS (continued) |                                                                                                            | V. EXCLUDABLE DELAY  |                         |              |                | LETTER CODES                                                                                                        |
|-----------------------------|------------------------------------------------------------------------------------------------------------|----------------------|-------------------------|--------------|----------------|---------------------------------------------------------------------------------------------------------------------|
| DATE                        | (DOCUMENT NO.)                                                                                             | Interval Between (a) | Start Date and Date (b) | Let Code (c) | Total Days (d) | For Identifying Periods of Excludable Delay Per 18 U.S.C. 3161(h)                                                   |
| /77                         | Govt's memo in opposition to defts motion to suppress filed and forward to chambers.jlj                    |                      |                         |              |                | A. Examination or hearing for mental or physical disability (18 U.S.C. 4244)                                        |
| 1-77                        | Defts Memorandum filed & forwarded to Chambers re motion to suppress.                                      |                      |                         |              |                | B. NARA Examination (28 U.S.C. 2902)                                                                                |
| 9-77                        | Before Costantino J - case called for trial - adjd without date.                                           |                      | 5-19-77                 | I            |                | C. State or Federal trial on other charges                                                                          |
| /77                         | By Costantino, J Order dtd 8/3/77 filed re that the deft's motion to suppress the heroin is granted.jlj    |                      |                         |              |                | D. Mandatory Appeal                                                                                                 |
| -77                         | Gpvt's Notice of appeal filed - docket entries and duplicate of notice mailed to the court of appeals      |                      |                         |              |                | E. Hearings on pretrial matters                                                                                     |
| /77                         | Notice of ordering of partial trahscript filed.jj                                                          |                      |                         |              |                | F. Transfers from other districts (per F.R.C.P. Rule 20, 21 & 40)                                                   |
| 9-77                        | Before Costantino J - case called - deft & atty present - adjd to Oct. 15, 1977 for report.                |                      |                         |              |                | G. Defendant Motion to actually under advisement. Period of up to 30 days is excludable per 3161(h) (1) (2)         |
| 2.77                        | Order filed received from the Court of Appeals that the record be filed on or before September 28th, 1977. |                      |                         |              |                | H. Miscellaneous Proceedings: Probation or Parole revocation, Deportation, Extradition                              |
| -77                         | Sten. transcript dtd 5-9-77 filed. mg                                                                      |                      |                         |              |                | I. Preclusion deferred by mutual agreement                                                                          |
| -77                         | Record on appeal certified and handed to Tony Schall AUSA for delivery to the court of appeals             |                      |                         |              |                | M. Unavailability of defendant or essential witness                                                                 |
| -77                         | Acknowledgment filed received from the court of appeals for receipt of record on appeal.                   |                      |                         |              |                | N. Period of mental or physical incompetency of defendant to stand trial                                            |
| -77                         | Before COSTANTINO, J-Case called. Adj'd to 12-5-77 for report. mg                                          |                      |                         |              |                | O. Period of NARA Commitment or Treatment                                                                           |
|                             |                                                                                                            |                      |                         |              |                | P. Superseding indictment and/or new charges                                                                        |
|                             |                                                                                                            |                      |                         |              |                | R. Defendant awaiting trial of Co-defendant when no severance has been granted                                      |
|                             |                                                                                                            |                      |                         |              |                | T. Continuance Granted per 3161(h) (3) (i.e. ends of justice or competency of case outweighs defendants' interests) |
|                             |                                                                                                            |                      |                         |              |                | U. Time between guilty plea and plea withdrawn                                                                      |
|                             |                                                                                                            |                      |                         |              |                | W. Grand Jury indictment returned per 3161 (b)                                                                      |

| FINE AND RESTITUTION PAYMENTS |                |             |      |                |
|-------------------------------|----------------|-------------|------|----------------|
| DATE                          | RECEIPT NUMBER | C.D. NUMBER | DATE | RECEIPT NUMBER |
|                               |                |             |      |                |
|                               |                |             |      |                |
|                               |                |             |      |                |
|                               |                |             |      |                |



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X  
UNITED STATES OF AMERICA

- against -

EDDIE NATAL RIQUELMY,  
CANDIDO NATAL RIQUELMY and  
FELIX LOPEZ, .

Defendants.

----- X  
THE GRAND JURY CHARGES:

COUNT ONE

On or about the 17th day of March, 1977, and for a period preceeding such date, within the Eastern District of New York and elsewhere, the defendants EDDIE NATAL RIQUELMY, CANDIDO NATAL RIQUELMY and FELIX LOPEZ did knowingly, intentionally, and wilfully combine, conspire, confederate, and agree together and with persons unknown to the grand jury to violate Section 841(a)(1) of Title 21, United States Code.

(1) It was a part of said conspiracy that the defendants would knowingly and intentionally possess with intent to distribute substantial quantities of heroin, a Schedule I narcotic drug controlled substance.

(2) It was a further part of said conspiracy that the defendants and co-conspirators would conceal the existence of the conspiracy and would take steps designed to prevent disclosure of their activities.

(Title 21, United States Code, Section 846)

COUNT TWO

On or about the 17th day of March, 1977, within the Eastern District of New York, the defendants EDDIE NATAL RIQUELMY, CANDIDO NATAL RIQUELMY and FELIX LOPEZ did knowingly,

AI 7  
-----  
*Westerline J*  
INDICTMENT

Cr. No. 77CR172  
(T.21,U.S.C.,§841(a)(1),  
and §846, T.18,U.S.C.,1952  
(a)(3) and T.18, U.S.C.,§2)



and wilfully possess with intent to distribute a substantial quantity of heroin, a Schedule I narcotic drug controlled substance. (Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2).

COUNT THREE

On or about the 17th day of March, 1977 within the Eastern District of New York and elsewhere, the defendants EDDIE NATAL RIQUELMY, CANDIDO NATAL RIQUELMY, and FELIX LOPEZ did wilfully and knowingly travel in interstate commerce from Chicago, State of Illinois to New York, State of New York, with intent to promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of an unlawful activity, said unlawful activity being the knowing and intentional possession with intent to distribute heroin, a Schedule I narcotic drug controlled substance in violation of Title 21, United States Code, Section 841(a)(1), and thereafter did perform and attempt to perform acts to promote, manage, carry on and facilitate the promotion, management, and carrying on of said unlawful activity.. (Title 18, United States Code, Section 1952 (a)(3) and Section 2).

A TRUE BILL.

\_\_\_\_\_  
FOREMAN.

\_\_\_\_\_  
DAVID G. TRAGER  
UNITED STATES ATTORNEY  
EASTERN DISTRICT OF NEW YORK

No. \_\_\_\_\_

**UNITED STATES DISTRICT COURT**

Eastern District of New York

Division

**THE UNITED STATES OF AMERICA**

vs.

EDDIE NATAL RIQUELMY, CANDIDO NATAL RIQUELMY and FELIX LOPEZ,

Defendants.

**INDICTMENT**

(T.21, U.S.C., §841(a)(1), and  
846, T.18, U.S.C., §1952(a)(3)  
and T.18, U.S.C., §2)

A true bill,

Foreman,

Filed in open court this \_\_\_\_\_ day  
of \_\_\_\_\_, A. D. 19\_\_\_\_

Clerk.

Bail, \$ \_\_\_\_\_

GPO 901-481

AUSA RHONDA FIELDS 330-7048



A 10

FILED  
IN CLERK'S OFFICE  
U. S. DISTRICT COURT E.D. N.Y.

APR 27 1977

TIME A.M. \_\_\_\_\_  
P.M. \_\_\_\_\_

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA,

-against-

NOTICE OF MOTION

Ind. #77CR172

EDDIE NATAL RIQUELMY, CANDIDO  
NATAL RIQUELMY and FELIX LOPEZ,

Defendants.  
-----X

S I R :

PLEASE TAKE NOTICE that upon the annexed affidavit of EDDIE NATAL RIQUELMY, duly sworn to the 24 day of April, 1977, and upon the indictment and all papers and proceedings heretofore had herein, the undersigned will move this Court on the 9th day of May, 1977 at 10:00 A.M. in the forenoon, or as soon thereafter as counsel can be heard , before the Honorable Mark A. Costantino, for an order suppressing all evidence seized herein anf for such other and further relief as the Court may deem just and proper in the premises.

Yours, etc.,

DAVID S. JACOBS  
Attorney for Defendant  
EDDIE NATAL RIQUELMY  
Office & P. O. Address  
166 Montague Street  
Brooklyn, New York  
(212) 855-8855



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

-against-

AFFIDAVIT

EDDIE NATAL RIQUELMY, CANDIDO  
NATAL RIQUELMY and FELIX LOPEZ,

Defendants.

-----X

STATE OF NEW YORK     )  
                              )SS.:  
COUNTY OF NEW YORK    )

EDDIE NATAL RIQUELMY, being duly sworn deposes and says:

That your deponent is one of the defendants herein and makes this affidavit in support of the annexed Notice of Motion.

That on or about March 17, 1977, your deponent entered the American Airline Terminal at La Guardia Airport, Queens, New York having disembarked from American Airlines flight #226 from Chicago, Illinois.

That after your deponent left the terminal certain officers unknown to your deponent stopped him and searched him and allegedly recovered a quantity of heroin which is the gravamen of the indictment herein.

That the said officers did not have sufficient probable cause to stop, question, or to search your deponent.

Upon information and belief, said officers did not have a search or arrest warrant for your deponent .



Your deponent respectfully contends that the search of his person was conducted on mere suspicion and that his constitutional rights were grossly violated by the conduct of said officers.

WHEREFORE, your deponent respectfully requests a hearing to determine the validity of the search and seizure herein in that same was conducted prior to arrest and upon information and belief without the benefit of a search or arrest warrant.

Sworn to before me this

21<sup>st</sup> day of April, 1977



DAVID S. JACOBS  
Notary Public, State of New York  
No. 24-7057510  
Qualified in Kings County  
Commission Expires March 30, 1978

EDDIE NATAL RIQUELMY

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NOTICE OF ENTRY

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court

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Yours, etc.,

~~BENJAMIN ANDREWS~~

ays for

Office and Post Office Address

~~BENJAMIN ANDREWS~~

BROOKLYN, N.Y. 11241

ey for

NOTICE OF SETTLEMENT

: PLEASE TAKE NOTICE that

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Yours, etc.,

~~BENJAMIN ANDREWS~~

ays for

Office and Post Office Address

~~BENJAMIN ANDREWS~~

BROOKLYN, N.Y. 11241

Esq .

ey for

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

EDDIE NATAL RIQUELMY,  
CANDIDO NATAL RIQUELMY and  
FELIX LOPEZ,

Defendants.

NOTICE OF MOTION

~~BENJAMIN ANDREWS~~

DAVID S. JACOBS

Attorneys for Defendant Eddie Natal

Office and Post Office Address Riquelmy

~~XXXXXXXXXX~~ 166 Montague St.

BROOKLYN, N.Y. 11241

TR 5-1767

To:

Esq .

Attorney for

Service of a copy of the within

is hereby admitted:

Dated, N.Y.,

19



FILED  
IN CLERK'S OFFICE  
U. S. DISTRICT COURT E.D. N.Y.

★ APR 27 1977 ★

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P.M. \_\_\_\_\_

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

NOTICE OF MOTION

Ind. # 77CR172

EDDIE NATAL RIQUELMY, CANDIDO  
NATAL RIQUELMY and FELIX LOPEZ,

Defendants.

S I R :

PLEASE TAKE NOTICE that upon the annexed affidavit of CANDIDO NATAL RIQUELMY duly sworn to the 25 day of April, 1977 and upon the indictment and all papers and proceedings heretofore had herein, the undersigned will move this Court on the 9th day of May, 1977 at 10:00 A.M. in the forenoon of that day or as soon thereafter as counsel can be heard before the Hon. Mark A. Costantino United States District Judge, Eastern District of New York for the following relief:

A. For an order suppressing certain statements made by the defendant CANDIDO NATAL RIQUELMY.

B. For an order suppressing from introduction at trial, certain papers, photos and documents seized from the person or the said defendant CANDIDO NATAL RIQUELMY.

C. For such other and further relief as the Court may deem just and proper in the premises herein.

Dated: Brooklyn, New York  
April 25, 1977

Yours, etc.,

SCHULMAN & LAIFER, ESQS.  
Attorneys for Defendant  
CANDIDO NATAL RIQUELMY  
Office & P. O. Address  
166 Montague Street  
Brooklyn, New York 11201



**TO:**

**RHONDA C. FIELDS  
ASSISTANT U.S. ATTORNEY  
U.S. COURTHOUSE  
CADMAN PLAZA  
Brooklyn, New York 11201**

**CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK  
FEDERAL BUILDING  
BROOKLYN, NEW YORK 11201**



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

-against-

AFFIDAVIT

EDDIE NATAL RIQUELMY, CANDIDO NATAL  
RIQUELMY and FELIX LOPEZ,

Defendants.

-----X

STATE OF NEW YORK     )  
                              )ss.:  
COUNTY OF NEW YORK    )

CANDIDO NATAL RIQUELMY, being duly sworn, deposes  
and says:

Your deponent is one of the defendants and makes  
this affidavit in support of the annexed motion herein.

On March 17, 1977, your deponent, after leaving the  
airlines terminal at La Guardia Airport, was stopped by certain  
Police Officers and was requested for his identification. At  
that time your deponent was searched and certain documents,  
photographs and papers were seized by said Police Officers.

Your deponent was not under arrest when said documents  
were seized; upon information and belief, said officers did not  
have a search warrant for your deponent.

Your deponent was then taken into custody and question-  
ed without having been advised of his constitutional rights.

Your deponent is not fluent in the English language



and at said time no interpreter was provided.

Your deponent respectfully contends that there was no probable cause to arrest him and that the stopping of your deponent in the public area outside of the airline terminal was legally unjustified.

Thereafter, your deponent was arrested and never advised of his constitutional rights but was questioned by said officers.

WHEREFORE, your deponent respectfully requests a hearing to determine the validity of the arrests, searches and seizures and statements taken herein.

Sworn to before me this

25 day of April, 1977

  
CANDIDO NATAL/RIQUELMY

STEPHEN R. LAIFER  
Notary Public, State of New York  
No. 31-223-525  
Qualified in Nassau County  
Commission Expires March 30, 1979



NOTICE OF ENTRY

Sir : PLEASE TAKE NOTICE that the within  
is a true-certified copy of a

duly entered in the office of the clerk of the within  
named court

on 19

Dated: 19

Yours, etc.,

**SCHULMAN & LAIFER**

Attorneys for

Office and Post Office Address  
166 MONTAGUE STREET  
BROOKLYN, N.Y. 11201

To:

Attorney for

NOTICE OF SETTLEMENT

Sir : PLEASE TAKE NOTICE that

of which the within is a true copy will be presented  
for settlement to Mr. Justice

one of the Justices of the within named Court  
at

on the day of 19

at M.

Dated: 19

Yours, etc.,

**SCHULMAN & LAIFER**

Attorneys for

Office and Post Office Address  
166 MONTAGUE STREET  
BROOKLYN, N.Y. 11201

To: Esq .

Attorney for

Index No. 77CR172

19

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

**UNITED STATES OF AMERICA,**

**-against-**

**EDDIE NATAL RIQUELMY, CANDIDO  
NATAL RIQUELMY and FELIX LOPEZ,**

**Defendants.**

**NOTICE OF MOTION AND  
AFFIDAVIT**

**SCHULMAN & LAIFER**

Attorneys for **deft- Candido Natal Riquelmy**

Office and Post Office Address  
166 MONTAGUE STREET  
BROOKLYN, N.Y. 11201  
(212) 855-5840 - 8855

To: Esq .

Attorney for

Service of a copy of the within

is hereby admitted:

Dated, N.Y., 19

Attorney for

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF NEW YORK

FILED  
IN CLERK'S OFFICE  
U. S. DISTRICT COURT E.D. N.Y. **19**  
★ SEP 23 1977 ★

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4 UNITED STATES OF AMERICA,

5 - against -

6 EDDIE NATAL RIQUELMY, CANDIDO NATAL  
7 RIQUELMY and FELIX LOPEZ,

8 Defendants.  
9 -----X

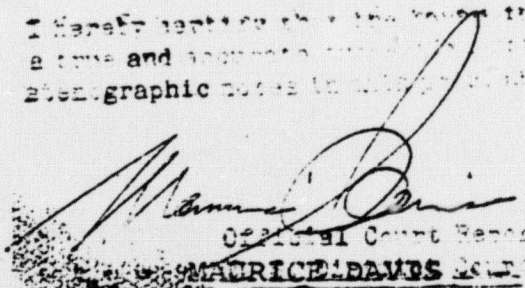
United States Courthouse  
Brooklyn, New York

11 9, 1977  
12 10:00 o'clock A.M.

13  
14 B e f o r e :

15 HONORABLE MARK A. COSTANTINO, U.S.D.J.

16  
17 I hereby certify that the foregoing is  
18 a true and accurate stenographic  
report of the proceedings.

19  
20   
21 MAURICE DAVIS  
22 ACTING OFFICIAL COURT REPORTER  
23  
24  
25



Appearances:

-4' 20

DAVID G. TRAGER, ESQ.  
United States Attorney  
for the Eastern District of New York

BY: RHONDA FIELDS,  
Assistant U.S. Attorney

JULIAN LINKER, ESQ.  
Attorney for Defendant Felix Lopez

DAVID JACOBS, ESQ.,  
Attorney for Defendant Eddie Natal  
Riquelmy

STEPHEN R. LAIFER ESQ.  
Attorney for Candido Natal Riquelmy

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THE CLERK: United States of America v s.

Eddie Natal Riquelmy, Candido Natal Riquelmy and  
Felix Lopez.

THE COURT: All right, ready?

MS. FIELDS: Your Honor, I believe all of the  
defendants at this point have joined in a suppress-  
ion motion to suppress both the evidence which was  
seized in this matter, and also the statements which  
may havebeen made in this matter.

THE COURT: Give me both.

MS. FIELDS: The first witness the Government  
will call is Agent Gerard Whitmore.

MR. LAIFER: May we ask that all witnesses  
be excluded?

THE COURT: Yes, all witnesses are excluded.

GERARD WHITMORE, having been duly sworn,  
by the Clerk of the Court, was examined and testified  
as follows:

DIRECT EXAMINATION

BY MS. FIELDS:

Q Would you tell us how you are employed, Mr.  
Whitmore?

A Yes, ma'am. I am a special agent with the  
Drug Enforcement Administration.

Q How long have you been employed by the DEA?



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A Since its inception in 1973.

Q And where were you employed before you were employed by the DEA?

A I was a special agent with the Bureau of Customs.

Q And how long were you employed in the Customs Bureau?

A Over six and a half years.

Q Can you tell us, generally, what your duties were when you were employed by Customs?

A Yes, ma'am.

I was a Customs Agent, primarily involved in international narcotics smuggling investigations.

Q And did you yourself, personally, conduct investigations?

A Yes, ma'am, I did.

Q Did you have an opportunity to observe individuals who were involved in international smuggling?

A Yes, I did.

Q Could you tell us, generally, what your duties have been since you were employed by the DEA?

A My duties have been primarily the investigation of violations of Federal narcotics laws.

Q Can you tell us whether or not you have been



involved in a special investigation involving airport searches?

A Yes, ma'am, I have.

Q Have you had any additional training, besides your normal DEA activities, relating to the searches?

A Yes, ma'am, I have.

Q Could you tell us what those are, please?

A I have been to a seminar in Washington, where we discussed narcotic couriers using domestic flights to transport narcotics from various cities throughout the United States, into other cities, such as New York.

Q Were you employed on March the 17th, 1977?

A Yes, ma'am, I was.

Q And where were you on that day?

A I was at LaGuardia Airport.

Q Why were you at LaGuardia Airport?

A I was at LaGuardia to try to determine, on certain flights, if there were narcotic couriers actually using the airport to bring narcotics into New York, from source cities.

Q And could you tell us whether or not you were observing flights on that day?

A Yes, ma'am, I was.

Q And did you observe an American Airlines Flight number 226 arriving that day?



1 A Yes, ma'am.

2 Q And could you tell us whether or not you observed  
3 the three individuals who you later found out to be the  
4 defendants, Eddie Natal Riquelmy, Candido Natal Riquelmy and  
5 Felix Lopez?  
6

7 A Yes, ma'am.

8 Q Could you tell us when you first saw these  
9 three individuals?

10 A I first observed them deplaning the flight, in-  
11 bound from Chicago, and that's when I first observed them.

12 Q What, if anything, did you notice about them?

13 A I noticed that they reacted in a different manner--

14 MR. LAIFER: I move to strike that out.

15 THE COURT: That's bad, just tell us what you  
16 know; what you saw.

17 A They reacted in a very --

18 THE COURT: That's an impression. You can't talk  
19 about impressions, just what you saw.

20 MR. LAIFER: We don't know which defendant he  
21 is talking about.

22 THE COURT: When you are talking about they, all  
23 three?

24 THE WITNESS: Yes, your Honor. They come off the  
25 plane, one after the other, Your Honor.



1  
2 THE COURT: Then you noticed them at that time?

3 THE WITNESS: I observed them coming.

4 Q Could you speak up --

5 THE COURT: Put the microphone on.

6 Q Did you see all three defendants together, in  
7 the beginning?

8 A No, ma'am.

9 Q What did you first see? What did you first notice?

10 A I observed them, the plane one at a time, one  
11 behind the other. They exited from the airplane and began  
12 looking around the lobby area to see --

13 Q How were they looking around the lobby area?

14 A They were looking in a fashion to see 'f anyone  
15 was observing them.

16 MR. LAIFER: Objection.

17 THE COURT: You can't give an impression. A  
18 fashion, you really can't tell when a person is looking  
19 around. What were they actually doing? Were they  
20 talking to each other? Did they appear nervous?  
21 You can tell us that, if you wish.

22 THE WITNESS: Yes, sir. People coming in on an  
23 airplane sometimes will look at passengers in the lobby  
24 to see if they recognize them. They will look at a  
25 person and see that they don't recognize them and look



1  
2 to the other person. They will do that.

3 You will observe people looking from one person's  
4 face to another. These individuals come off and in-  
5 stead of looking for a person, for identification, they  
6 were looking from one person to another and back, to  
7 see if they were still being observed.

8 MR. LAIFER: Move to strike that out.

9 THE COURT: It is stricken. It's an operation of  
10 the mind. The rest is good.

11 Q Could you tell us whether or not, when the  
12 defendants first got off the plane, were they walking together?

13 A No, ma'am.

14 Q Were they walking separately?

15 A They were walking one behind the other. They  
16 walked through the airport in such a fashion -- in a way that  
17 led me to believe --

18 THE COURT: What did they do in walking that  
19 caused you to do something, if anything?

20 THE WITNESS: Yes, your Honor.

21 Q Could you tell us what you observed about them  
22 when they were walking?

23 A When they walked down the hallway, they were  
24 walking in a triangular fashion. One was in the lead, one  
-5 was to the left, shortly behind him, and one was directly be-



1 behind the first individual.

2 There were crowds of people walking through the hallway.  
3 These three individuals would speed up, as a group of three,  
4 keeping the same amount of distance between their bodies.  
5 When the crowd slowed up, all three would slow down. It's  
6 unusual to see.  
7

8 MR. LAIFER: I move to strike.

9 THE COURT: Never mind what you see.

10 Q Did you notice them speaking to each other, when  
11 they walked through the terminal?

12 A No, ma'am.

13 Q Could you tell us what you did, after you  
14 observed them walking through the terminal?

15 A Yes, ma'am.

16 I surveilled them down to the lobby, to the baggage  
17 claim area. They didn't pick up any luggage. They had no  
18 carry-off luggage. They had no -- nothing whatsoever with  
19 them, to indicate that they had luggage. They exited the  
20 building or the terminal.

21 Q And what happened?

22 A At that point, when they exited the building,  
23 they started talking outside the lobby, or outside of the  
24 baggage claim area, and proceeded towards the taxi stand.

25 Q What, if anything, did you do?



1 A I followed him around to the taxi stand, and  
2 the three of them were getting on line to get a taxi.

3 Q What, if anything, happened?

4 A I identified myself as a Federal narcotics  
5 officer and asked them if they were travelling together and  
6 where they were coming from.

7 Candido --

8 Q Excuse me. Could you tell us, at this point,  
9 why you stopped these three individuals at this time?

10 MR. LAIFER: Objection.

11 THE COURT: The question is why. What did they  
12 do that caused you to walk up to them and talk to  
13 them?

14 THE WITNESS: Yes, your Honor, observing them  
15 leaving the plane, they appeared to me to be extremely  
16 nervous and to display characteristics which are not  
17 normal.

18 MR. LAIFER: Objection.

19 THE COURT: Strike out "Not normal."  
20 They appeared to be nervous?

21 THE WITNESS: Yes, your Honor. They also acted  
22 in a way which other passengers did not react.

23 MR. LAIFER: Objection.

24 THE COURT: I can't accept that, you will have to  
25



1 strike that part out. Go ahead.

2  
3 Q Agent Whitmore, could you tell us whether or not  
4 you noticed anything about these individuals, which you had  
5 observed in other individuals?

6 MR. LAIFER: I don't understand the question.

7 THE COURT: I didn't hear it to be honest with  
8 you. I lost it.

9 Q In your experience as the DEA Agent, can you tell  
10 us whether or not there was anything specific about these  
11 individuals which would cause you to stop them?

12 A Yes, ma'am. As I said, it was the way they  
13 proceeded out of the terminal; three people, together, slow-  
14 ing down and speeding up, keeping a constant distance between  
15 their bodies; that they didn't talk to each other; that they  
16 were coming from a source city.

17 Q When you say source city, what do you mean by  
18 source city?

19 A A source city is a city that is so designated  
20 by the DEA, after intensive studies by the Intelligence  
21 Division, to determine routes of narcotics couriers, coming  
22 into the United States, to New York.

23 Under Intelligence, we are finding brown heroin is  
24 coming through either Texas or California and being shipped  
25 to various cities in the United States, labelled source cities,



1  
2 and New York at the present time is not a source city. It's  
3 a recipient city, on the receiving end of brown rock heroin.

4 Q What are known by you as source cities?

5 MR. LAIFER: I object.

6 MS. FIELDS: The question is: What are known by  
7 Agent Whitmore to be source cities?

8 THE COURT: I suppose -- I don't know if he  
9 should answer the question. She said explain what is  
10 a source city. What he knows is something else. You  
11 can't tell us that. Next question.

12 Q Agent Whitmore, do you have--ok.

13 Agent Whitmore was there any particular reason  
14 for you observing the individuals coming off of the flight  
15 from Chicago?

16 MR. LAIFER: Objection.

17 THE COURT: You are dropping your voice. I am  
18 trying to hear the questions so that I can rule on  
19 them. What was the question, again?

20 MS. FIELDS: The question was: Is there any  
21 reason why Agent Whitmore was observing the individuals  
22 coming off the flight from Chicago.

23 MR. LAIFER: These particular individuals; the  
24 people on the plane?

25 THE COURT: Everyone on the plane?



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THE WITNESS: Yes.

THE COURT: He was watching everyone.

THE WITNESS: I was watching -- Chicago being a source city of narcotics, being brought into New York I was observing the Chicago flights. Chicago is a source city --

MR. LAIFER: Objection.

THE COURT: That's the answer.

MR. JACOBS: The whole line of questioning of Mr. Whitmore on source city is not binding on these --

MR. LAIFER: I ask your Honor to take judicial notice that Chicago has three and a half million people.

THE COURT: It's more than New York?

MR. LAIFER: Right.

Q Agent Whitmore, would you tell us what happened when you first approached the defendants?

A Yes, ma'am.

I approached them and identified myself as a Federal narcotics officer. I asked them where they were travelling from and were they together. I asked the individual in the light blue suit -- Candido Riquelme acted as a spokesman for the group.



MR. LAIFER: Objection.

THE COURT: He answered you?

THE WITNESS: He answered that they were travelling together from California, and I asked him for his ticket, which he presented to me in the name of Natal. I asked him for identification which he presented a Pennsylvania driver's license in the name of Riquelmy and showed me another document which had a different spelling for the name Riquelmy. I asked him if he was Puerto Rican or Mexican. He said, "No, no. I'm Puerto Rican."

Q Did you have a conversation with any of the other defendants at this time?

A Yes, ma'am.

The individual in the dark blue suit and pink shirt.

MR. LAIFER: That would be Mr. Lopez.

A Mr. Lopez. I asked him for his ticket and when he offered me the ticket, he told me that --

MR. LAIFER: Objection to the form; "He offered me." He asked for --

THE WITNESS: Yes, your Honor. He offered an explanation to me --

MR. JACOBS: Objection to "Offer."

THE COURT: Did he make a statement to you at

that time?

THE WITNESS: Yes, sir. He said to me, "The ticket is not in my name because it was made by them."

Q Did you look at this ticket?

THE COURT: Did he tell who "Them" was?

THE WITNESS: No, he did not.

Q Did you look at his ticket?

A Yes, ma'am.

Q Were you given any identification by this individual?

A Yes, ma'am. He showed me a New York State Driver's license.

Q Could you tell us whether or not the driver's license and ticket was in the same name?

A No, it was not.

The person identified on the ticket was T. Puente. His driver's license showed his name to be Felix Lopez.

Q And could you tell us whether or not you went to the third defendant?

A Yes, ma'am, I did.

He said that he did not have the ticket with him. He offered me a green card for identification, which is in the name of Riquelmy, and which did not look like any valid identification to me.



1  
2 MR. LAIFER: Objection.

3 THE COURT: Sustained, he gave you that?

4 THE WITNESS: Yes, sir.

5 THE COURT: And you looked at it?

6 THE WITNESS: Yes, at the same time that he showed  
7 it to me he dropped a white piece of paper on the ground,  
8 which was a map, which he tried to cover with his  
9 foot, which I recovered.

10 MR. LAIFER: I object to anything after this  
11 officer stopped these men, outside the airport, and  
12 started questioning them, and identified himself.

13 THE COURT: No, I will allow it. Go ahead.

14 MR. JACOBS: I object to him saying the defendant  
15 tried to hide something.

16 THE COURT: What did he do?

17 Put his foot on it?

18 THE WITNESS: He attempted to cover it with his  
19 foot.

20 MR. JACOBS: I object to the word, "Attempted."

21 THE WITNESS: I stopped him with my hand.

22 THE COURT: All right.

23 Q Now, can you tell us whether you asked Eddie  
24 Riquelmy for his ticket and he indicated that he did not have  
25 his ticket, whether or not you observed any ticket on him?

1  
2 A Yes, ma'am. I observed that the ticket was  
3 sticking out from his rear trouser pocket.

4 Q Now, at this point, when you were first talking  
5 with these individuals, where was this occurring?

6 A This occurred outside the terminal, at the  
7 taxi ramp, at the airport.

8 Q That is a public ramp?

9 A Yes, it is.

10 Q Had you at this point put the defendants under  
11 arrest?

12 MR. LAIFER: That's for the Court to determine  
13 whether they were under arrest at that time, whether  
14 he actually said the words.

15 THE COURT: What he did.

16 MR. LINKER: No, the question was: Did you  
17 then place him under arrest. That's what we object  
18 to. I think that's a question your Honor will have  
19 to determine, whether or not in fact they were in  
20 custody at that time.

21 THE COURT: He is merely giving us the vocal  
22 part of it. That's all he is saying.

23 MR. LAIFER: You mean the actual words?

24 THE WITNESS: They were not arrested at this  
25 point, no.



1  
2 Q What occurred after you spoke to the individuals?

3 A Because there was three of them, I was alone--

4 MR. LAIFER: Objection to that; "Because there  
5 was three of them, and I was alone."

6 THE COURT: He was alone. All right.

7 A I couldn't comprehend all of these different  
8 identification forms. Their hands were shaking. They were  
9 nervous and I asked them would they please accompany me into  
10 the lobby, so that I can go over the identification,  
11 especially the green card that Eddie Riquelmy gave me.  
12 It appeared to me as a phony identification card.

13 MR. LAIFER: Objection.

14 THE COURT: You looked at it and examined it?

15 Is that right?

16 THE WITNESS: Yes, I did.

17 Q Could you tell us whether or not the three  
18 defendants went with you?

19 A Yes, ma'am, they did.

20 Q Where did you go?

21 A We went right inside the door, to the baggage  
22 claim area; and an open area.

23 Q Could you tell me whether or not they offered  
24 any objection to following you?

25 MR. LAIFER: Objection.

1  
2 A No.

3 MR. LAIFER: It's irrelevant.

4 THE COURT: It doesn't make a difference whether  
5 they offered an objection or not. It makes no diff-  
6 erence.

7 Q Could you tell us whether or not anyone was  
8 with you, at this time?

9 A Not at this time, no, ma'am.

10 Q Could you tell us whether or not you had shown  
11 any weapons at this time?

12 A No, ma'am.

13 Q Would you tell us what happened, once you went  
14 into the baggage claim area?

15 A Yes, ma'am.

16 I was questioning Eddie Riquelmy about the green card  
17 that he had shown me, because in my experience it has been--

18 MR. LAIFER: Objection to his experience.

19 THE COURT: Just what happened, then; not  
20 experienced.

21 THE WITNESS: I tried to get my partner on the  
22 red page phone. I had called and asked that my  
23 partner come down to the area, so that we can go  
24 through the identifications, to see if these people were  
25 showing valid identification.



1 MR. LAIFER: Move to strike it out.

2 THE COURT: Did you call your partner?

3 THE WITNESS: Yes, I did.

4 THE COURT: Did he show eventually?

5 THE WITNESS: Yes, your Honor, he did.

6 Q Now, before your partner arrived, could you  
7 tell us whether or not you had any further conversation with  
8 Candido Riquelmy?  
9

10 A Yes, ma'am, I did.

11 And asking him for the questions, he said to me,  
12 "You misunderstood me, I didn't mean that we came from  
13 California. We're travelling from Chicago and we're Puerto  
14 Rican."  
15

16 Q And did you -- what happened after you spoke to  
17 Candido Riquelmy?

18 A I told Candido to go over by another telephone  
19 there. I just wanted to question Eddie Riquelmy for a few  
20 minutes, and that would be it.

21 He started talking to the other two individuals in  
22 Spanish.

23 MS. FIELDS: If I may take just a moment?

24 THE COURT: All right.

25 THE CLERK: Document marked as Government's  
exhibit one.



1  
2 Q I show you Government's exhibit one. Are you  
3 familiar with this?

4 A Yes, ma'am.

5 Q Could you tell us what it is, please?

6 A This is a photograph of the lobby area, where  
7 I questioned the three defendants.

8 Q And can you tell us when this photograph was  
9 taken?

10 A This photograph was taken last week.

11 Q And at whose direction was the photograph made?

12 A At your direction.

13 Q And you were present when the photograph was  
14 made?

15 MR. LAIFER: We have no objection to its being  
16 in evidence, if it truly depicts the time of March  
17 7th, as evidence for the purposes of this hearing.

18 THE COURT: Ok.

19 Q Could you tell us, from the photograph, where  
20 the three defendants were located at the time you came back  
21 into the baggage area?

22 A When I first came into the baggage claim area,  
23 I brought them over to the American Airline Paging phone.

24 MR. LINKER: Could we have the area marked?

25 Q Would you mark that as A please, and area A is



1 the area where you had all the individuals?

2 A Yes, ma'am.

3 Q Then what happened?

4 THE COURT: Go ahead.

5 A This was the point where Candido started just  
6 that explanation, that "We're coming from Chicago." I had  
7 misunderstood. I asked him to go over by the phone, back  
8 here.

9 Q Would you mark that as B please?

10 (Witness marking photograph.)

11 Q That is where Candido Riquelmy went?

12 A Yes, ma'am.

13 Q Then what happened?

14 A I looked at Felix Lopez' --

15 Q Which individual?

16 MR. LINKER: That is the one you indicated as  
17 Torres. That is not Torres. It's Felix Lopez.

18 A After looking at him, that is Lopez, I asked  
19 him if he would stand toward Candido, and he went over toward  
20 the first bank of telephones.

21 Q Would you mark that as C, please?

22 A Yes, ma'am.

23 Q And then what happened?

24 A At this point, there was a taxi dispatcher  
25

1  
2 passing and I asked him to get the Port Authority police  
3 officer outside to come in, and to witness my interview of  
4 the individuals.

5 Q Ok. And did some one come?

6 A Yes, Mr. William Towns of the Port Authority  
7 Police came into the lobby area.

8 Q Then what happened?

9 A I explained to Officer Towns --

10 MR. LAIFER: Objection.

11 THE COURT: No, we have the officer.

12 MR. LAIFER: We have the officers here.

13 THE COURT: He can tell us, anyway.

14 A I brought him in to be a witness and I told  
15 him what I was doing and that I wanted him as a witness  
16 that one individual had given me an identification which I  
17 wasn't satisfied --

18 MR. LAIFER: Objection. I move to strike all  
19 of that out as self-serving.

20 A I wasn't satisfied --

21 THE COURT: You cannot tell us whether you  
22 were satisfied or not. Just what your investigation  
23 showed or did; not your impression of right or wrong,  
24 or proper. Ok?

25 THE WITNESS: Right.



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Q After Officer Towns came in, what did you do?

A I went back over to Eddie Riquelmy.

Q And where was he standing?

A He was standing where A is, here.

Q What then did you do?

A I asked him for further identification.

Q What happened?

A He had a leather coat, similar to the one that he is wearing today, wrapped in his arm, and he went for one of the pockets to pull identification out or to pull something out, which point I stopped him. He made a sudden move to the jacket.

MR. LAIFER: I object to that.

THE COURT: Go ahead.

Q And what did you do?

A I told him that I would take the identification out of the jacket. "Would you please give me the jacket?"

When he handed the jacket to me, I had felt this bulge. I thought that it was the identification or a weapon or whatever it was.

MR. LAIFER: What was the last part?

May we have that read back?

(Thereupon, the stenographer read back the aforementioned answer.)

MR. LAIFER: We won't even move to strike that out.

THE COURT: There was a large bulge in the jacket, you say?

THE WITNESS: Yes.

Q Did you feel the bulge?

A Yes, ma'am.

Q What did it feel like?

How did it feel?

A It felt like a large object, about a pound.

Something that was hard and --

Q What did you do after you felt the object?

A I removed it from the jacket.

Q And what was it?

A It was a package, wrapped in tape, similar to many packages that I have seen in the past.

MR. LAIFER: I move to strike it out.

THE COURT: Just the package you saw.

Q Could you tell us where the other defendants were, when this was happening?

A Yes, ma'am.

Felix Lopez was at the point marked C, in this photograph and Candido Riquelmy was at the point marked B, in this photograph.

Q What, if anything, did you do or observe, after



1  
2 you found this package?

3 A I had stuck my pen in it and observed that it  
4 was crystalline or powdery feeling, and the small puncture  
5 mark revealed a brown powder which resembled heroin, to me;  
6 brown rock heroin.

7 Q Could you tell us whether you have seen other  
8 packages like this before?

9 A Yes, ma'am, I have.

10 Q Could you tell us what else occurred at this  
11 point?

12 A At this point I told Officer Towns that I  
13 had found what I believed to be a package of heroin, and I  
14 was placing all three individuals under arrest, for violation  
15 of Federal narcotics laws.

16 Q Did you advise them that they were under  
17 arrest?

18 A Yes, ma'am, I did.

19 Q Then what happened?

20 A Candido Riquelmy started yelling things in  
21 Spanish to the other two individuals, again.

22 Q Then what happened?

23 A I, my partner, come in at this point and  
24 removed Candido Riquelmy to a section of the lobby, further  
25 back, to get him away from the other two individuals and what-

1  
2 ever he was yelling to them in Spanish, that we couldn't  
3 silence.

4 Q And could you tell us if anything else occurred?

5 A Yes, ma'am. We searched the prisoners, at  
6 this point, and Officer Towns directed my attention to the  
7 phone booth over the head of Felix Lopez.

8 Q What did you do?

9 A When I looked up, I found exhibit two, which  
10 was a second package, over the phone.

11 Q And could you mark that phone booth for us?

12 A It is marked --that is where he was, at  
13 point C.

14 Q At point C?

15 A Yes.

16 Q And the package was --

17 A On the phone; directly over where my marking  
18 is, on top of the wall phone.

19 THE COURT: You mean the package was on the  
20 phone?

21 THE WITNESS: Yes, sir.

22 THE COURT: And where was the defendant?

23 THE WITNESS: Right there.

24 MR. LINKER: I just can't see what it is on  
25 the picture.



1  
2 THE COURT: You can't see what it is on the  
3 photograph?

4 THE WITNESS: I had taken the one package from  
5 the one individual's jacket.

6 THE COURT: Is this before you questioned him  
7 or after you questioned him?

8 THE WITNESS: After I questioned them.

9 THE COURT: Did you have them under observation,  
10 at all times?

11 THE WITNESS: Yes, your Honor.

12 THE COURT: Did you have this defendant,  
13 Lopez, under observation at all times?

14 THE WITNESS: I could see him at the phone booth.

15 THE COURT: You could see him at the phone booth?

16 THE WITNESS: Yes. I was standing right here.  
17 He was standing right here.

18 Eddie Riquelmy was standing there.

19 Q Now, could you tell us whether or not this  
20 baggage area, which is depicted by this picture, is a public  
21 area; private area?

22 A It's a public area.

23 Q And approximately how far is it from the  
24 place where you first talked to the defendants?

25 A 40 feet, 30 feet; somewhere in that area.

1  
2 THE COURT: Did you take them into the room after  
3 they went to the telephones? Did you take them some  
4 place you said?

5 THE WITNESS: I brought them into this lobby.

6 THE COURT: They were all together, were they?

7 THE WITNESS: Yes, your Honor.

8 THE COURT: Did they make any phone calls at  
9 this point?

10 THE WITNESS: No, your Honor.

11 THE COURT: Each one picked a telephone to stand  
12 by?

13 THE WITNESS: The one -- Felix Lopez went here.

14 THE COURT: The right; phone number one?

15 THE WITNESS: Yes, your Honor.

16 Q Would you tell us the letter on it, for the  
17 record?

18 A It's the point marked C.

19 The second individual, Candido Riquelmy was the one  
20 that was talking in Spanish, and I told them to go away  
21 over, from the two individuals, and not to speak to them  
22 until I finished questioning them; point B.

23 THE COURT: Point B?

24 THE WITNESS: Yes, your Honor.

25 THE COURT: What about the other fellow; where



1  
2 did he stand?

3 THE WITNESS: He was at the point A, where I was  
4 with him.

5 THE COURT: I see.

6 THE WITNESS: And the Port Authority police  
7 officer was standing right about where this picture  
8 was taken.

9 THE COURT: You could see the two phones, where  
10 they were standing at?

11 THE WITNESS: I could see this phone and I could  
12 see Eddie Riquelmy. I didn't have a good view of  
13 Candido.

14 THE COURT: You didn't have a good view of  
15 Candido at B?

16 THE WITNESS: No, sir.

17 Q Now what happened after you placed the  
18 individuals at various points and you found the second package  
19 over the telephone?

20 A They were brought to the Port Authority Police  
21 desk, so that we could search them and put all the identificat-  
22 ion in separate bags.

23 Q Now, before their arrest, had you physically  
24 taken any objects from the defendants?

25 MR. LAIFER: I object to the form of that

question.

The Court has to determine that.

THE COURT: Go ahead. What was the question?

MS. FIELDS: The question was: Before he had placed them under arrest, had he taken, physically taken, any objects from them?

THE COURT: All right, it's a good question.

A I had taken the airline tickets, which I still had, the package of heroin, Exhibit 1--

THE COURT: That's the one on the phone?

THE WITNESS: No, that was the one in his pocket.

MR. LAIFER: That was before the arrest, your Honor.

THE COURT: That was before the arrest?

THE WITNESS: Yes.

The second package over the phone was after the arrest.

(continued next page)



Q Could you tell us whether or not -- You also indicated that you looked at certain identification. Could you tell us whether or not you maintained that or you had given it back to any of them?

A I had maintained the green card that Eddie Riquelmy gave me, the map that he had dropped on the floor, the tickets from Candido Riquelmy and Felix Lopez and their driver's licenses. With each license at that point, as they had given it to me, I put it all together in my outside pocket. The rest of the identification was kept on their persons. They were handcuffed and brought over to the police desk.

THE COURT: Can I ask you a question: When you went to this airport, LaGuardia, did you go to see these three defendants, particularly, when you went to the airport? Did you know anything about these defendants before?

THE WITNESS: No, your Honor.

THE COURT: You haven't received any information from anyone?

THE WITNESS: No, your Honor.

THE COURT: You were just watching for people coming off the airplane?

THE WITNESS: Yes, your Honor.



1  
2 THE COURT: How many people came off the air-  
3 plane?

4 THE WITNESS: 70 to 80 people.

5 THE COURT: Out of 70 or 80, these were the  
6 three you stopped, eventually, without any information  
7 whatsoever, just that they were coming off the airplane?

8 THE WITNESS: Yes, your Honor.

9 Q Agent Whitmore, did you stop them completely  
10 without any information at all, or did you have some informa-  
11 tional background for stopping them?

12 MR. LAIFER: Objection.

13 THE COURT: I didn't hear that. What was the  
14 question?

15 MS. FIELDS: I had asked the Agent whether he  
16 had, your Honor, asked whether he had any other informa-  
17 tion --

18 THE COURT: Specifically, whether he was to  
19 look for these three individuals, by information, by  
20 an informant, some reason to look at the people coming  
21 off the airplane, to find these three? I'm concerned  
22 with probable cause here. Mere suspicion is not enough.  
23 There has to be probable cause. 70 people coming off  
24 an airplane, you just may have hit it right, but that  
25 doesn't make it within the constitutional limits.



1  
2 Q Could you tell us, Agent Whitmore, first of  
3 all, why you were observing this particular airplane?

4 A Yes, ma'am. We observed the incoming Chicago  
5 flights.

6 THE COURT: I understand that, because that's  
7 a source city. I understand that.

8 Q Now, could you tell us --

9 THE COURT: How many flights come in from  
10 Chicago every day?

11 THE WITNESS: Two every hour.

12 MR. LAIFER: Perhaps the U.S. Attorney will  
13 stipulate it's a shuttle city.

14 THE COURT: I know it's a shuttle plane. Go  
15 ahead.

16 Q Was that a shuttle plane?

17 A It's an hourly flight, on American Airlines,  
18 and it comes from 9:40, approximately, in the morning, until  
19 approximately 10:40, in the evening.

20 THE COURT: This was the one from California  
21 to Chicago and then you take the shuttle to New York,  
22 or did they stay on the same airplane from California,  
23 land in Chicago for a stop over, and then come to New  
24 York? Do you know anything about that?

25 THE WITNESS: I found later, your Honor, that



1  
2 they had come directly from Chicago to New York. They  
3 had never been to California. They just made a state-  
4 ment that --

5 THE COURT: They had not come from California?

6 THE WITNESS: No, they had not come from  
7 California.

8 Q Could you tell us whether or not, as a DEA  
9 Agent for 6 years, and a customs agent for 4 -- for 6 years,  
10 whether or not in your experience, there were any particular  
11 -- There was any particular reason for you stopping these  
12 three individuals?

13 MR. LAIFER: I object.

14 THE COURT: I don't understand that. He has  
15 already told us. I will take a short recess; five  
16 minutes recess.

17 (Thereupon, a recess was taken at the time  
18 noted 11:42.)

19 DIRECT EXAMINATION (CONTINUING)

20 BY MS. FIELDS:

21 Q Agent Whitmore, you told us that once you  
22 were in the baggage claim area, you questioned Eddie Riquelmy  
23 and asked for further identification, is that correct?

24 A Yes, ma'am.

25 Q And at that time, did he have anything on him?



1  
2 A He was dressed in a shirt and pair of slacks  
3 and he had the jacket, which you have in your hand, wrapped  
4 in his arm.

5 MS. FIELDS: Would you mark this as Exhibit  
6 2, please?

7 THE CLERK: Jacket marked Government's Exhibit  
8 2 for identification.

9 Q And can you tell us whether or not this is the  
10 jacket?

11 A Yes, I can.

12 Q How can you identify it?

13 A It has my initials and the date it was taken  
14 on the inside of the jacket, on the rear of it. It has an  
15 evidence sticker with my name, date, case number and exhibit  
16 number on it.

17 Q Now, can you tell us how the defendant had  
18 that jacket on him?

19 A Yes, ma'am. He had this wrapped in his arms,  
20 doubled over and clutching it like this. (Witness indicating).

21 Q What happened when you asked the defendant for  
22 further identification?

23 A He went to the inside of his jacket, in a  
24 sudden movement.

25 Q What did you do?

1  
2 A I stopped his hand at that point.

3 Q How did you do that?

4 A I put my hand, like this, over this, his hand  
5 and said "Stop."

6 Q What did you feel at that time?

7 A I felt there was a large object in the jacket.

8 Q Then what did you do?

9 A I asked him to let me take out whatever it was,  
10 the identification. I reached in --

11 THE COURT: What did he say, when you asked  
12 him to do that?

13 THE WITNESS: He made no statement at all. I  
14 reached in and noticed there was a cut in the jacket  
15 and pulled the hard object out. It was Exhibit 1,  
16 wrapped in masking tape.

17 MR. LAIFER: Government's Exhibit 1 is a  
18 photograph; not 1 in evidence.

19 THE WITNESS: I mean DEA Exhibit 1.

20 MR. LAIFER: We have no objection to having  
21 this jacket marked in evidence, for the purposes of  
22 this hearing.

23 THE COURT: All right.

24 THE CLERK: Government's Exhibit 2, previously  
25 marked for identification, marked in evidence.



1  
2 Q Now, Agent Whitmore, going back to your first  
3 observations of the defendants, can you, first of all, tell  
4 us whether or not you have had occasion to observe drug  
5 couriers --

6 MR. LAIFFER: Objection.

7 MR. LINKER: I object.

8 THE COURT: Let me hear it again.

9  
10 Q Can you tell us whether or not you have had  
11 occasion to observe narcotic couriers, in your previous  
12 occupations?

13 THE COURT: I will allow that.

14 A Yes, ma'am, I have.

15 Q When would be the first period of time?

16 A After my initial training period in customs,  
17 I was stationed at JFK International Airport in the IAB,  
18 which is the International Arrivals Building out on the  
19 floor, in the area before passengers come to customs inspec-  
20 tors for examination, and at that point, I was a plainclothes  
21 investigator, with other investigators, who would pick out  
22 people who were likely candidates for secondary search, to  
23 determine whether in fact they were carrying narcotics into  
24 the United States.

25 Q And did you also have occasion to make the  
same observations, when you were working for the DEA?

1  
2 A Yes, ma'am, I have.

3 Q What would that be?

4 A At our domestic airports, we have a program  
5 to isolate and identify --

6 MR. LAIFER: Objection.

7 THE COURT: I will allow that. It's known as  
8 a profile. Go ahead.

9 A In which we looked for people to display  
10 certain characteristics, which we have found utilized by  
11 narcotic couriers.

12 Q Have you yourself, aside from these defendants,  
13 observed narcotics couriers, as part of this program?

14 A Yes, ma'am, I have.

15 Q And can you tell us whether or not you have  
16 stopped other individuals, as a part of that program?

17 MR. LAIFER: Objection.

18 THE COURT: I don't think it's material. Just  
19 what he observed and what his observations were.

20 Q Now, can you tell us whether or not, in your  
21 experience, aside from a profile, you have found certain  
22 factors to be suspicious to you?

23 A Yes, ma'am.

24 MR. LAIFER: Objection. Suspicion is not the  
25 law in this country.



1  
2  
3 THE COURT: I will allow it. Suspicion is not  
4 the law. We are talking about whether or not he has  
5 reason to believe or reasonable suspicion.

6 MR. LAIFER: Probable cause.

7 THE COURT: We are in for stopping. We will  
8 get to frisking later. Reasonable suspicion.

9 MR. LINKER: I submit only the observation of  
10 these three defendants is relevant in this suppression  
11 hearing.

12 THE COURT: No, whatever his experience may  
13 be as a DEA officer would be sufficient, even for this  
14 hearing, which would give him reasonable suspicion to  
15 stop these people, if that was so.

16 A Yes, ma'am, I have observed certain characteris-  
17 tics being used by people, narcotic couriers.

18 THE COURT: Now, just for the record, so I  
19 know whether or not what conclusions I must draw after  
20 the entire matter is completed, what do you say you  
21 observed these three men, when they alighted from this  
22 airplane?

23 THE WITNESS: Your Honor, the individuals came  
24 off the airplane and as I told you, people exit an  
25 airplane, they will look for people they can identify  
in the lobby area, that meet them. If they look from

1  
2 face to face, they are looking for a person that they  
3 know or recognize. Usually they do this if they walk  
4 down --

5 THE COURT: Is this part of your experience?

6 THE WITNESS: Yes, your Honor. These  
7 individuals come out of the area and look from face to  
8 face at the people waiting in the area, and then went  
9 back and looked again. As they were walking down the  
10 terminal, they kept looking around behind them to see --

11 THE COURT: They kept looking down behind them?

12 THE WITNESS: Right.

13 THE COURT: What did that indicate to your  
14 experience, if anything?

15 THE WITNESS: That indicated that they were  
16 trying to detect someone following them or observing  
17 a person observing them, after they alighted.

18 MR. LAIFER: May we have an objection?

19 THE COURT: Yes, you may have, but it is in  
20 light of his experience and circumstances. Go ahead.

21 Q Could you describe how they were walking out  
22 of the terminal?

23 A They were walking in a fashion, one in front  
24 of the other, one several feet to the left and behind them  
25 and one directly behind the first one. One walking several



1  
2 feet behind the first one and walking in such a manner that  
3 they keep with visual sight of each other, walking at the  
4 same pace of speed, slowing up and slowing down, together  
5 as a unit, disregarding other factors in the corridor, such  
6 as other people, or conditions which would make them split  
7 into three.

8 Q Could you tell us whether or not you observed  
9 them either speak to each other, or, in any manner, acknowledge  
10 each other?

11 MR. LAIFER: Wasn't it asked and answered?

12 THE COURT: What was the question?

13 Q Could you tell us whether or not you observed  
14 them speaking to each other in --

15 THE COURT: I just want to get some basis for  
16 it so you can continue. You may.

17 A They did not speak to each other at all, after  
18 they exited down the ramp way, until they exited the terminal.

19 THE COURT: At no time did you see them talk  
20 to each other?

21 THE WITNESS: Not until they left the terminal.

22 Q Could you tell us, in your experience, whether  
23 you have observed this behavior before?

24 A Yes, ma'am.

25 Q In what circumstances?

1  
2 A In people alighting from an aircraft, who don't  
3 want to be placed with each other, in case someone in the  
4 terminal can identify one of them, the other two can just  
5 exit, so they won't refer to each other until they feel it's  
6 safe.

7 MR. LAIFER: Of course, there is an objection.

8 THE COURT: You have the objection. I under-  
9 stand. Go ahead.

10 Q You further indicated that you did not observe  
11 the defendants with any baggage or pick up any baggage; is  
12 that correct?

13 A Yes, sir -- Yes, ma'am.

14 Q Could you tell us whether or not you have  
15 observed that situation before?

16 A Yes, ma'am. It's been my experience that  
17 people travelling with no luggage, and using just limited  
18 carry on, which they didn't even have, some times it's an  
19 indicator to me that they are possibly doing something that  
20 they want to get from the aircraft as quickly as possible,  
21 out of the terminal, into the street.

22 MR. LAIFER: Same objection to that, your Honor.

23 THE COURT: Go ahead.

24 Q Would that be all the indicators in addition  
25 to the flight the defendants were coming off of, that would



1  
2 cause you to approach them?

3 A Yes, ma'am.

4 MR. LAIFER: Objection. It's leading.

5 THE COURT: Yes, it is leading.

6 Q Could you tell us, generally, what all the  
7 factors were for you to stop these defendants?

8 A Yes, ma'am. In view of the fact that the  
9 first defendant came from the source city, that they displayed  
10 certain characteristics, both on eye movements, with the  
11 way they walked down the corridor, the way they turned about  
12 frequently, the way they exited the terminal, not speaking  
13 to each other, and then when they were outside, at that point,  
14 joining together to go to a cab, indicated to me that there  
15 was something suspicious in their behavior, and that I wanted  
16 to question them further.

17 Q Now, after you questioned them, initially,  
18 okay, could you tell us what, if anything, caused you to  
19 question the defendants further?

20 A Yes, ma'am. Upon initial questioning, Candido  
21 Riquelmy, first of all, stated that they were travelling  
22 together from Chicago -- I mean from California, and I knew  
23 that the plane was inbound from California. When I checked  
24 his ticket, it was not a connecting ticket. It was a one-way  
25 cash ticket paid in a different name than what was provided



1  
2 to me. The second individual, Felix Lopez, also had a ticket  
3 in a different name than the identification he showed me,  
4 and he was, he had offered a kind of a fast explanation and --

5 MR. LAIFER: Objection, your Honor.

6 A He offered an explanation for them.

7 THE COURT: Okay. He offered explanation.

8 THE WITNESS: This ticket was purchased by  
9 them, as I stated. When we got inside the terminal,  
10 he didn't speak English any more. I didn't bring that  
11 point up.

12 MR. LAIFER: He wasn't asked.

13 THE COURT: All right.

14 Q Did you also, at that point, have a conversa-  
15 tion with Eddie Riquelmy?

16 A Yes, ma'am, at which he told me he had left  
17 his plane ticket on the airplane and it was sticking out of  
18 his trouser pocket. He showed me a piece of identification  
19 which looked to me, in checking identification, it was a  
20 homemade piece of identification.

21 MS. FIELDS: That will be all, at this point.

22 (Continued on next page.)  
23  
24  
25



MR. LAIFER: May I cross-examine?

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. LAIFER:

Q What time did you arrive at the airport, on that date?

A Approximately at 8:45 or 8:50, that morning.

Q What time was it that this flight came in from Chicago?

A This was approximately 9:45 -- They arrived between 9:40 and 9:50, in that time period.

Q Is it fair to say that you were at the airport for approximately one hour, when the flight came in from Chicago?

A Yes, sir.

Q How many flights did you watch, prior to this one?

A One.

Q And where had that come in? Had that also been an American Airlines flight?

A No, sir.

Q Where had that been?

A It was a TWA flight.

Q From where?



1  
2 A L.A.; Chicago; New York.

3 Q And what time did you watch that flight?

4 A That flight arrived approximately 9:30.

5 Q Now, would it be fair to say, you watch  
6 numerous flights, every day, in your work?

7 A Yes, sir.

8 Q And this flight came in from Chicago. You had  
9 no information whatsoever concerning any individual on that  
10 flight; is that correct?

11 A Yes, sir.

12 Q You had no information on the pilot staff or  
13 anyone of that nature, in connection with that flight; is  
14 that correct?

15 A That's correct, sir.

16 Q And you had no information forwarded to you  
17 from Chicago, this particular flight; is that correct?

18 A That's correct.

19 Q Now, you've told the Judge, there were  
20 approximately 70 to 80 people deplaning from that particular  
21 flight; is that right, that American Airline's flight?

22 A As I recall, yes, sir.

23 Q And when the defendants had gone out, were  
24 they the first ones out? Were they in the middle or were  
25 they in the rear of the people?



1  
2 A They were towards the rear passengers.

3 Q How many people got out before them?

4 A I would say over 50, or approximately 50 people.

5 Q Where were you standing, at that time?

6 A I was sitting in the area of people waiting  
7 to board that plane, when it left LaGuardia to wherever it  
8 was bound.

9 When these planes come in, the passengers  
10 depart. They put new mails on them. They clean it up and  
11 put passengers right back on the plane.

12 Q You didn't actually see anybody get off of that  
13 plane? You saw them from the gate area?

14 A They came to the gate, from the aircraft.  
15 There is no other way you can come from.

16 Q It's like a tunnel?

17 A Yes, sir.

18 Q And approximately 50 people walked passed you;  
19 isn't that right?

20 A Yes, sir.

21 Q And then these three men walked passed you,  
22 also; isn't that right?

23 A Yes.

24 Q And at that time, would it be fair to say,  
25 you were within a few feet of them?



1  
2 A Yes, sir.

3 Q And you could observe them?

4 A Yes, sir.

5 Q What was Candido Riquelmy wearing at that  
6 time; the one in blue?

7 A I think he was wearing the same suit.

8 Q Were there any apparent bulges in the suit  
9 or anything of that nature?

10 A It wasn't a tight fitting suit.

11 Q Just a regular suit?

12 A A little bulkier than normal. You can see it  
13 fits him a little bulky.

14 Q The other defendant?

15 A Eddie Riquelmy.

16 Q He had a jacket doubled over in his arms; is  
17 that correct?

18 A Yes, sir.

19 Q And he walked off the plane, also?

20 A Yes, sir.

21 Q The other defendant walked off the plane; is  
22 that correct?

23 A Yes, sir.

24 Q People walked off behind them, too; other  
25 people?



1  
2 A Yes, sir.

3 Q How far from you were they, from you when they  
4 walked out from the area where they disembarked from?

5 A 3 feet; 10 feet.

6 Q How far did they have to walk before they got  
7 out of the outside of the building itself?

8 A A few hundred feet.

9 Q Could you approximate it, from this Courtroom?

10 A It's longer; the exit gate.

11 Q How long did it take for them to walk passed  
12 you to the outside taxi area; how long, totally?

13 A 100 seconds or 120 seconds from that area.

14 Q Two minutes?

15 A Approximately two minutes, yes, sir.

16 Q The entire instance of your observing them  
17 come out of the tunnel, out to the taxi stand, was less than  
18 two minutes?

19 A Not entirely. It would be that far, if they  
20 walked. They might have been three minutes, all in all.

21 Q The total observation, before you went over  
22 to talk to them, was approximately three minutes?

23 A From the point they first exited the aircraft  
24 to the tunnel; about three minutes.

25 Q In that three minute period of time, did you

1  
2 Eddie Riquelmy open the jacket and reach into it, the coat  
3 that he had on, under his arm? Did he ever reach into it  
4 as he was walking?

5 A No, sir.

6 Q Did you ever see him speak to either one of  
7 the other two defendants?

8 A No, sir.

9 Q Did you ever see the other two defendants  
10 ever reach into their pockets?

11 A No, sir.

12 Q Did you see any packages during this three  
13 minute period?

14 A No, sir.

15 Q Did you see any exchange of money between any  
16 of these people, during this three minute period?

17 A No, sir.

18 Q Had you ever seen any of these three men  
19 before, except during this three minute period?

20 A No, sir.

21 Q They walked with the other passengers; isn't  
22 that correct?

23 A Yes, sir.

24 Q Wouldn't it be fair to say that it took other  
25 passengers approximately the same amount of time to leave that



1  
2 tunneled area, to get to the front of that airport?

3 A I couldn't answer that.

4 Q Is that because you were watching them?

5 A Yes, sir.

6 Q Now, also, isn't it fair to say, there were  
7 other people walking in and about that American Airlines  
8 area, leading to the front of that building?

9 A Yes, sir.

10 Q And wouldn't it be fair to say that that's a  
11 busy airport, that it is a busy time?

12 A That's not a particularly busy time, in the  
13 morning. It's a little less than moderate.

14 Q There were people going in both directions;  
15 isn't that right?

16 A Yes, sir.

17 Q Which defendant looked back, during this three  
18 minute period?

19 A Both Candido and Eddie Riquelmy looked, several  
20 times.

21 Q Back?

22 A Yes.

23 Q Were there people behind them, when they looked  
24 back?

25 A Certainly.

1  
2 Q Were there people waiting at the debarking  
3 point, to go somewhere else, when they looked back?

4 A Yes.

5 Q And did you notice whether any other people  
6 looked back, who were off of that plane? Did you notice  
7 that?

8 A I didn't observe anyone looking back, no, sir.

9 Q Did you see the other defendant looking back?

10 A Yes. Many times Candido and Eddie Riquelmy  
11 were nervous and looking around.

12 Q Looking around?

13 A Looking back.

14 Q When they looked back, did Eddie clutch this  
15 jacket tighter to him, when he looked back?

16 A I didn't notice it, sir.

17 Q Did you see anybody in uniform pass them at  
18 that time?

19 A What do you mean?

20 Q Such as police officers, security people,  
21 anything of that nature?

22 A They passed through security and passed by a  
23 police officer.

24 Q When they did that, did he shift the package  
25 in any way, or his jacket?



1  
2 A No, sir, but --

3 Q Answer the question. Did he shift the jacket  
4 in any way, when he passed the security point; yes or no?

5 A No.

6 Q Was he shielded in any way? Did anyone pull  
7 into his way as he passed the security point, such as to  
8 go right next to him, like that?

9 A May I answer that, sir --

10 THE COURT: Just answer the question.

11 Q Just answer the question. Did they bunch  
12 together when he passed security?

13 A No, but they did hug the wall.

14 Q You mean they slid along the wall?

15 A They got to the extreme right hand side of the  
16 wall, away from the security area and the police officer,  
17 and they did look over at the security area, as they passed  
18 it, which was another indicator, to me.

19 Q They looked over at the police officer; is that  
20 right?

21 A Yes, sir.

22 Q And did he hide the coat, to his right side,  
23 as he did that?

24 A No, sir. I didn't observe him do that.

25 Q Did the other defendants come and screen him  
from that security area?

1  
2 A No, because they were the furthest point from  
3 it.

4 Q One behind the other?

5 A Yes, sir.

6 Q They never talked, did they?

7 A No, sir.

8 Q You never heard any words, "Here comes the  
9 security area"?

10 A No. They weren't passing the security area;  
11 along side it.

12 Q Within a few feet of it; is that right?

13 A Yes.

14 Q How many feet were they from the police officer?

15 A That day, the police officer would have been  
16 on the other side of the corridor, about 12 feet, 15 feet;  
17 something like that.

18 Q Did they go faster, as they passed the security  
19 area?

20 A No, there was people bunched up at the security  
21 area, so they had to go the rate everybody was travelling.

22 Q They walked at the same rate as everyone else;  
23 is that right?

24 A Yes.

25 Q Did they go faster when they passed the police



1  
2 officer?

3 A They couldn't.

4 Q They walked in the normal flow, as everyone  
5 else, following each other?

6 A Yes, sir.

7 Q Were there people on that plane, husbands and  
8 wives?

9 A Yes, sir.

10 Q Were husbands walking behind wives, sometimes?

11 A Certainly.

12 Q Because people had to bunch to get out of there?

13 A Yes, sir.

14 Q So, as a matter of fact, many people in the  
15 same groups were going one, two and three, at that point?

16 A Yes, sir.

17 Q Then many people weren't speaking; isn't that  
18 true?

19 A Yes, sir.

20 Q They went outside the taxi stand; is that  
21 correct?

22 A That's correct.

23 Q How far behind them were you, as they exited  
24 the building?

25 A I didn't exit the building as they exited.

1  
2 Q As they exited, how far behind them were you?  
3 I take it you were following them?

4 A Yes, sir.

5 Q How far behind them were you, when they exited  
6 the building?

7 A About 10 feet.

8 Q As you were walking from the American Airlines  
9 tunnel, when they got out, during this approximate three  
10 minute time, until they got outside, were there people  
11 between you and these defendants?

12 A Yes, sir.

13 Q Were there times when you lost sight of the  
14 defendants?

15 A Not all three of them, but there were times  
16 I lost sight of one.

17 Q How far behind them were you when they were  
18 walking up to the door?

19 A About 8 or 10 feet.

20 Q There were people between you and them?

21 A Yes, sir.

22 Q Did you see other people there not talking?

23 A Certainly.

24 Q When they went outside, they went over to the  
25 taxi stand. You saw that; is that right?



1  
2 A They exited the building and went along the  
3 outside, around the corner, to the taxi stand.

4 Q This is a type of taxi stand, that you have  
5 to line up, as you leave the airport?

6 A Yes, sir.

7 Q And it has bars?

8 A Yes, sir.

9 Q And first come, first served; a cab pulls up  
10 and you get in and then you leave?

11 A Yes.

12 Q Did you go outside the building at that time?

13 A Yes, sir.

14 Q And when you went outside the building, how  
15 many people, aside from the defendants, were at the taxi  
16 stand?

17 A There were a few people in front of them,  
18 and people -- After I started questioning, I noticed that  
19 a few people started coming behind them.

20 Q How many people in front?

21 A There weren't too many. I had to walk fast  
22 to stop them from getting into a cab; two or three.

23 Q Had you seen these people before; those two  
24 or three?

25 A No, sir.

1  
2 Q Did you see where they came from?

3 A No, sir.

4 Q Do you know if they came off that flight?  
5 Do you know?

6 A I don't know, sir.

7 Q The defendants, when they were standing there,  
8 was one in back of the other; that is outside where the  
9 taxi stand was?

10 A No, sir.

11 Q What were they doing?

12 A They were together, in a group.

13 Q Talking, apparently talking to each other?

14 A Yes, sir.

15 Q And at that time, did you see anybody pass  
16 any money back and forth?

17 A No, sir.

18 Q Did you see anybody pass any packages back  
19 and forth?

20 A No, sir.

21 Q Did you overhear any conversation?

22 A No, sir.

23 Q Did you, at that point, recognize any of these  
24 three men as having seen them somewhere, on a previous day?

25 A No, sir.



1  
2 Q When the three men were standing there, talking,  
3 you went up to them; isn't that right?

4 A Yes, sir.

5 Q You identified yourself by saying you were an  
6 agent of the DEA?

7 A No, sir.

8 Q What did you say?

9 A I said, "I am a Federal Narcotics Officer."

10 Q And you showed them a badge?

11 A My credentials, yes, sir.

12 Q May we see your credentials?

13 A Certainly.

14 MR. LAIFER: If I may, Your Honor?

15 THE COURT: Yes.

16 Q Who did you walk up to first, Agent Whitmore?

17 A I approached a gropp, and as I said before,  
18 Candido appeared to be the spokesman. He voluntarily  
19 answered me.

20 Q You went up to Candido, with this in your  
21 hand?

22 A Yes.

23 MR. LAIFER: May we have this deemed marked  
24 Defendant's Exhibit A, in evidence?

25 THE COURT: Yes.

(Documents deemed marked Defendant's Exhibit

A in evidence.)

Q You walked up to Candido with this card, and said, "I'm a Federal Narcotics Officer," to Candido Riquelmy?

A Yes, I did.

Q You displayed this to him and the other two defendants; isn't that right?

A Yes, sir.

Q At that time, you asked for identification from them; is that right?

A First, I asked them whether they were travelling together and where they were coming from.

Q Did you say anything more to them?

A No, sir.

Q You identified yourself and then you said, "Where are you travelling to and where are you coming from?"

A I said, "I'd like to ask you whether you are travelling together and where you are coming from."

Q You knew where they were coming from?

A I was trying to determine what they would answer.

Q You were trying to find out what they were going to answer you?



1  
2 A Yes, sir.

3 Q Candido said they were coming from California?

4 A They were travelling from California.

5 Q At that point, did you ask for identification?

6 A I asked to see his ticket.

7 Q Where was his ticket, at that time?

8 A In his coat pocket.

9 Q You asked him for that ticket; isn't that  
10 right?

11 A Yes, sir.

12 Q And this was definitely after you had shown  
13 Defendant's Exhibit A to him; isn't that right?

14 A Yes, sir.

15 Q And when you asked him to give you that ticket,  
16 he responded to your request and showed you the ticket; isn't  
17 that right?

18 A Yes, sir.

19 Q And after he showed you the ticket, what else  
20 did you say to him, then?

21 A I asked for his identification.

22 Q And he gave you identification, pursuant to  
23 your request; isn't that right?

24 A Yes. I asked -- Well, prior, -- You jumped  
25 one point. Prior to me asking where they were coming from,

1  
2 and were they travelling together, I had asked them whether  
3 they were Mexican or Puerto Rican. At this point, he was  
4 telling us he was Puerto Rican and, "Here is my driver's  
5 license."

6 (Continued on next page.)  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25



1  
2 Q You didn't ask them if they were South  
3 American?

4 A No.

5 Q They were apparently Hispanic?

6 A Yes.

7 Q That was the reason you stopped them also;  
8 is that right?

9 THE COURT: You want him to answer the  
10 question? He asked whether or not that was another  
11 reason for stopping him, because they were Hispanic.

12 A Not because they were Hispanic, but because  
13 they resembled Mexicans.

14 Q Now, if they were three Caucasians, you  
15 wouldn't have stopped them; isn't that true?

16 A No, sir.

17 Q You would have or you wouldn't have?

18 A You asked me if they were Caucasians, dis-  
19 playing the same characteristics?

20 Q Would you have still stopped them at the taxi  
21 stand?

22 A I would have asked them for identification,  
23 yes, sir.

24 Q You then asked Mr. Riquelmy -- Mr. Candido  
25 Riquelmy for further identification; is that right?

1  
2 A Yes, sir, because the ticket was in the name  
3 Natal. He showed me something in the name of Riquelmy. I  
4 said, "This is not the same name."

5 Q Candido Natal Riquelmy?

6 A That's right. The ticket was in the name  
7 C. Riquelmy.

8 Q When did you see the driver's license?

9 A When I asked for identification, he presented  
10 a Pennsylvania driver's license.

11 Q You ascertained he came from Pennsylvania?

12 A Yes, sir.

13 Q You didn't give him his driver's license  
14 back?

15 A No, sir.

16 Q You didn't give him his ticket back, did you?

17 A No, sir.

18 Q As a matter of fact, you took identification  
19 from all three of these gentlemen; is that right?

20 A Yes.

21 Q And you took their driver's license; isn't  
22 that correct?

23 A Eddie Riquelmy had no driver's license.

24 Q The other one, you took his driver's license,  
25 also; isn't that right?



1  
2 A Yes, sir.

3 Q And then you said, "Come with me back  
4 inside"?

5 A I said, "Would you mind accompanying me  
6 inside." There was a crowd. There were people coming  
7 behind them in the taxi stand. We were in the public view  
8 and I didn't want to embarrass them.

9 Q You had their driver's license, right?

10 A That's right.

11 Q Were you going to give them their driver's  
12 license and tickets back, and let them go?

13 A You are asking me -- what was the question?

14 Q The question was: were you going to give  
15 them their driver's licenses back and tickets back and let  
16 them go? That's the question.

17 A Well, I wanted to see what Eddie Riquelmy had.

18 Q The question was: were you going to give  
19 them their driver's licenses and tickets back and let them  
20 go, rather than take them in the terminal?

21 A I can't answer it that way.

22 Q You wanted to see more from Eddie Riquelmy?

23 A Yes.

24 Q You said you had already seen a driver's  
25 license?

1  
2 A Plus something else, with a different  
3 spelling.

4 Q Now, I ask you again, would you have given  
5 them the papers back and released them; yes or no?

6 A I can't answer that question, at this point.  
7 I don't know.

8 Q You don't know? The point is that you asked  
9 them to at least come back inside with you?

10 A Yes, sir.

11 Q Now, what would happen if Candido Riquelmy  
12 started to walk away? What would you have done?

13 By the way, you had a gun with you, did you not?

14 A Yes, sir.

15 Q What would have happened if he started to  
16 walk away?

17 A You mean you are asking me what I would have  
18 done? I can't answer you, since that didn't arise.

19 Q You can't answer what you would have done?

20 A I don't know.

21 Q In any event, inside they went?

22 A Yes, sir.

23 Q And when they went inside, you told Candido  
24 Riquelmy where to stand; isn't that right?

25 A Well, he started, at one point -- I asked him  
to stand away from the others and to refrain from yelling



1 in Spanish to the other two individuals.

2 Q Why?

3 A Because I didn't know what they were doing,  
4 at this point.

5 Q What did you tell a man who is not under  
6 arrest, what to do? That's my question.

7 A He was giving them some sort of instructions  
8 in Spanish; yelling to them. They were all extremely  
9 nervous and I didn't know what they were doing.

10 Q You told him what not to do?

11 A He could have been saying, "Let's kill this  
12 guy." I didn't know what he was saying.

13 Q Did you ever see anybody reach into their  
14 pockets, when they were back in the terminal? Yes or no?

15 A Yes.

16 Q Who reached into his pocket?

17 A Eddie Biquelry.

18 Q In his pocket?

19 A You said in pockets. You didn't say  
20 traveler pockets. He did reach for a pocket.

21 Q Did the other two men ever reach for anything  
22 there or were they standing there?

23 A They were standing there.

24 Q You took them back inside; is that right?

25

1  
2 A Yes, sir.

3 Q They had to go because you had their  
4 driver's license and tickets; isn't that right?

5 A They could have left.

6 Q Without their driver's license and tickets;  
7 isn't that right?

8 A I guess, certainly, they could have left  
9 without them.

10 Q When you were back inside, that's when you  
11 told them what to do; isn't that right? You told one of  
12 them to stand here and one of them to stand there; near  
13 points B and C?

14 A Yes, sir.

15 Q You told them to do it? You didn't ask them  
16 to do it? You told them to do it; isn't that right?

17 A Well, in that he was acting in a manner  
18 which was not consistent with the other behavior --

19 MR. LAIFER: I move to strike the answer as  
20 not responsive.

21 THE COURT: Just answer the question.

22 A Yes.

23 Q You told them to do it and that was even  
24 before you put a hand inside the jacket; isn't that true?

25 A Yes, sir.



1  
2 Q Did the other two men, in this area where  
3 you were watching them, flee or attempt to flee?

4 A No, sir.

5 Q Did they do anything of a suspicious nature,  
6 such as winking at each other and continue to look around  
7 again, or did they just stand there?

8 A No. As I said, Candido was giving them  
9 instructions in Spanish.

10 Q He was talking to them in Spanish?

11 A Yes.

12 Q And then you separated them?

13 A Yes.

14 Q You ordered one of them to go here and one  
15 of them to go there, and then they did that?

16 A Yes, sir.

17 Q They complied with your direction; isn't  
18 that right?

19 A Yes, sir.

20 Q And now you were with Eddie Riguelmy; isn't  
21 that right?

22 A Yes, sir.

23 Q Because he was the one with the jacket;  
24 isn't that right?

25 A Yes, sir.

1  
2 Q And you wanted to see what was in that  
3 jacket; isn't that right?

4 A No, sir.

5 Q You didn't?

6 A No, sir.

7 Q How come you picked out Eddie Riquelmy?

8 A Now, because he was the one with the  
9 identification that did not match. He was the one that  
10 said he didn't have an airline ticket. He was the one  
11 that dropped the map on the floor that he was trying to  
12 cover with his foot. He was the one that was extremely  
13 nervous. That's why I wanted to question him.

14 Q I thought they were all nervous?

15 A But he was extremely nervous.

16 Q Was he shaking?

17 A Yes, he was.

18 Q You identified yourself as a police officer  
19 or enforcement officer?

20 A Yes, sir.

21 Q You had already taken his brother's identifi-  
22 cation, and the other guy's identification; is that right?

23 A Yes.

24 Q You had already taken them back to the terminal;  
25 isn't that right?



1  
2 A No, because he didn't have any identification.  
3 It was a green home-made looking card.

4 Q Do you have that card here?

5 A Yes, sir.

6 MR. LAIFER: May we see it, please? With  
7 Your Honor's permission, may I open this exhibit?

8 THE COURT: Yes.

9 Q Now, you asked the man his name; is that right?

10 A Yes, sir.

11 Q He told you his name was Eddie Fiquelmy;  
12 isn't that right?

13 A Yes, sir.

14 Q You asked the man where he lived; the normal  
15 questions; isn't that correct?

16 A No, sir. I asked him if he had better  
17 identification.

18 Q Better identification?

19 MR. LAIFER: May we have this deemed marked  
20 Defendant's Exhibit B for Identification?

21 THE COURT: Yes, mark it.

22 MR. LAIFER: In fact, we will offer this in  
23 evidence at this time.

24 MR. FIELDS: No objection.

25 THE CLERK: Defendant's Exhibit B previously

marked for identification, now marked in evidence.

Q All right now, stand up please. You saw him on that day; March 17; isn't that right? Eddie Riquelmy?

A Yes, sir.

Q And did he have black hair?

A Yes, sir.

Q The same as he does now?

A Yes, sir.

Q Did he have brown eyes?

A Yes, sir.

Q Did he tell you he lived on Montrose Avenue in Brooklyn?

A No, sir.

Q Did you ask him?

A No, sir.

Q Did he tell you his name was Eddie Fiquelmy?

A Yes, sir.

Q Was he apparently 25 years of age?

A Yes, sir.

Q The same as on the identification, on this card?

A Yes.

Q As a matter of fact, the card he gave has his



1  
2 picture on it?

3 A It has what appears to be his picture.

4 Q It's a membership of the United Industrial  
5 Workers of North America; a union card?

6 A I would question this as to what it is.

7 MR. LAIFER: May the Court see this exhibit,  
8 please?

9 (Mr. Laifer handing document to the Court.)

10 Q Was the name he gave you the correct name  
11 and the same name that was on that card?

12 A Yes, sir.

13 Q Did the description on the rear of the card  
14 fit his description?

15 A Yes, sir.

16 Q Was it his picture, apparently his picture on  
17 the card, or has the picture changed since then?

18 A No, it hasn't.

19 Q Now, where did he give you that card?

20 A He gave me this card -- I'm trying to recall.  
21 Right, as we were walking in to the doorway: when were  
22 walking in. The white mass area fell by the doors and he,  
23 what appeared to me, tried to put his foot on the top of it  
24 so I would not see it.

25 Q He was walking?

1  
2 A At this point, he stopped to give me this  
3 card. When I saw the piece of white paper, he almost  
4 deliberately put his foot on my fingers.

5 Q You had his card already, didn't you?

6 A I had this: yes, sir.

7 Q Defendant's Exhibit B?

8 A Yes.

9 Q And you were still talking to him inside:  
10 isn't that right?

11 A Yes, sir.

12 Q But you didn't want to see what was in that  
13 jacket?

14 A No.

15 Q It was after you had Defendant's Exhibit B  
16 in your possession that you put your hand inside that  
17 jacket; isn't that true?

18 A No, sir.

19 Q It was before that that you had put your  
20 hand inside that jacket?

21 A It was when I asked him for further  
22 identification.

23 Q I am asking whether it was after you already  
24 had this green card in your possession?

25 A Yes, sir.



1  
2 Q He was already in the terminal; isn't that  
3 right?

4 A Yes, sir.

5 Q He was already separated from his brother  
6 and the other defendant; isn't that right?

7 A No, sir. It initially was, as I said, he  
8 was trying to provide identification to me, at that time.

9 Q But you had this green card already, to  
10 show you identification, didn't you?

11 A He come up with that when we were coming in  
12 to the building.

13 Q That even has his picture on it; does it not?

14 A That is his picture on it, yes.

15 Q Now, afterwards, you were inside; isn't that  
16 true?

17 A Yes.

18 Q He was still standing with his coat; isn't  
19 that true?

20 A Yes.

21 Q He was separated from the other two  
22 defendants?

23 A There was a point he was separated from the  
24 other two.

25 Q What did you want more, at this point, from



1  
2 this man?

3 A First of all, there was the airline ticket  
4 that was still in his pocket, that I had observed, that he  
5 told me he didn't have, and his extremely nervous demeanor  
6 at this time.

7 Q That was all?

8 A Besides those other things which led me to  
9 stop them, in the first place.

10 Q Then, what did you do, when they were  
11 standing there? What did you do or he do?

12 A The first thing was I called my partner on  
13 the red telephone.

14 Q If he, Candido Riquelmy, wanted to walk  
15 away, you would have let him walk away?

16 A Yes, sir.

17 Q You would assume so?

18 A Yes.

19 Q The defendant didn't do anything?

20 A No, sir.

21 Q The other defendant didn't do anything else,  
22 either?

23 A No.

24 Q As of this moment, you can't say they  
25 committed any crime; isn't that true?



1  
2 A That's not true.

3 Q You arrested them?

4 A Didn't I arrest him?

5 Q You did, but I want to know why you arrested  
6 them. Why did you arrest Candido Piquelmy?

7 A He was traveling with a person transporting  
8 an amount of heroin from Chicago to New York City.

9 Q He was traveling with him?

10 A Yes, sir.

11 Q Let me ask you this, Agent: how long was it  
12 that you were back in the terminal that you put your hand  
13 inside that jacket?

14 A Maybe four minutes.

15 Q How long, up to that point, had you directed  
16 Candido Piquelme and the other defendant to be separated  
17 and not to speak to Eddie Piquelme?

18 A That happened later; maybe a minute.

19 Q A minute before that, or a minute after that?

20 A A minute before that. They were all standing  
21 with me, initially. The two were showing me different  
22 papers. Felix Lopez was showing me things out of his  
23 wallet and Candido was saying, "What seems to be the problem  
24 here," and he started to offer an explanation as to, "Wait  
25 a minute, I misunderstood you. We are not coming from



1  
2 California. We are coming from Chicago." And I was  
3 asking them what their business was in Chicago.

4 Q You were asking them these questions?

5 A Yes, sir.

6 Q After you had taken them back in the terminal?

7 A After I had taken them back, yes.

8 Q After you had gotten this green card and the  
9 other information from them; isn't that correct?

10 A Yes, sir.

11 Q You were still questioning them?

12 A I was interested in getting more identifica-  
13 tion, still from Eddie Riquelmy, who hadn't given me the  
14 ticket yet, and had only provided me with Exhibit No. 2.

15 Q How many feet was it to the taxi stand?

16 A Thirty or forty feet.

17 Q Inside the building?

18 A That's right.

19 Q You called your partner; isn't that correct?

20 A Yes.

21 Q When you were with Eddie Riquelmy, he reached  
22 into the jacket; is that what you say?

23 A When I asked him, "Look, we can get this over  
24 with right away. Can you show me identification that will  
25 satisfy me?"

R 6



1  
2 Q You weren't satisfied by a picture on the  
3 union card, with the description and address on it?

4 A This is not an identification card.

5 Q That is not identification?

6 A No, sir.

7 Q What would you consider identification, if a  
8 man's picture on a union card is not identification, other  
9 than a fingerprint? What could be better than that? What  
10 do you require in the way of identification?

11 A A valid piece of identification. This, to me,  
12 looks like a homemade piece of identification. It's a  
13 wrinkled card, with lamination, with a picture that was  
14 clipped out of a photograph.

15 Q Every picture is cut out of a photograph?

16 A No, this was not a photograph. This was a  
17 photograph. This is not a portrait. There is a difference  
18 in identification.

19 Q Isn't it a printed union card, with printing  
20 on it?

21 A I wouldn't know.

22 Q Is it apparently printed or is it handwritten,  
23 the stuff in black?

24 A This states, it's a printed card which states  
25 it's a United Industrial Workers of North America. It



1  
2 says, "This is not evidence --"

3 Q What does it say?

4 "This is not evidence of a member's membership  
5 standing." Did you read the back of this?

6 Is it the same name he gave you?

7 A He could have picked this card up and put his  
8 picture on it.

9 Q You can do it with drivers' licenses? You  
10 can do it with passports? You can do it with anything?

11 A Yes, sir.

12 Q What did you need to be satisfied?

13 A I needed something that was at least a valid  
14 identification.

15 Q And what would that be?

16 A Some sort of driver's license.

17 Q Passport; fingerprints?

18 A Certainly.

19 Q That would satisfy you?

20 A Yes.

21 Q So, as a matter of fact, your own identification  
22 could be forged, too; is that right?

23 A It could be laminated over.

24 Q Now, he was standing there with a jacket; is  
25 that right? You wanted more identification?



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A Yes, sir.

Q And he went to give you more identification;  
isn't that right?

A He made a sudden movement for the inside  
pocket.

Q He reached for his inside pocket?

A Yes, sir.

Q What did you do then?

A I put my hand over his hand.

Q Why did you do it?

A I didn't know what he would come out of the  
jacket with.

Q You didn't know what he would come out of  
the jacket with?

A Yes, sir.

Q What did he come out with?

A Nothing. His hands were entering the jacket.

Q What did you do?

A I stopped him from taking whatever it was --

Q What was in that jacket?

A There was a pound of narcotics. There was  
also a wallet, papers; whatever he had.

Q With identification on it?

A Yes, sir.



1  
2 Q Now, when you put your hand into that jacket  
3 pocket, you felt a mass in there; is that right?

4 A When I touched the jacket on the outside,  
5 there was obviously some big, bulky item in there.

6 Q There was a bulky item in there?

7 A Yes, sir.

8 Q Did you put your hand further in, at that  
9 point?

10 A Yes, sir.

11 Q Did you feel a wallet in there?

12 A No. Where I felt the bulky item, I went  
13 for the bulky item, which was possibly a weapon.

14 Q You thought it was a weapon? Did it feel  
15 like metal?

16 A Not metal; it felt like a rubber object.

17 Q What did you think it was; a bowling ball?

18 A A bowling ball would be excellent.

19 Q This wasn't apparently hard, like metal; a  
20 knife or gun or anything like that? It was something like  
21 something rubberized?

22 A A soft one.

23 Q A real soft one?

24 A Not real soft.

25 Q Like a whiffle ball?



1  
2 A The whiffle ball would be much harder.

3 Q But something soft?

4 THE COURT: All right, we will recess now  
5 for lunch. Come back at 2:15.

6 (Thereupon, a lunch recess was commenced  
7 at the time noted at 1:05 P.M.)

8 (Time noted: 2:40 P.M.)

9 THE COURT: All right.

10 CROSS-EXAMINATION

11 BY MR. LAIFER (continuing):

12 MR. LAIFER: May I continue, Your Honor?

13 THE COURT: Yes.

14 Q All right, now, Agent, you were standing with  
15 Eddie Riquelmy; is that correct, in the terminal?

16 A Yes.

17 Q And he had his coat wrapped up; is that right,  
18 this coat?

19 A That's correct.

20 Q And he reached into the coat, when you asked  
21 him for further identification; is that right?

22 A Yes.

23 Q And you put your hand on his hand; is that  
24 correct?

25 A Yes, that's correct.

1  
2 Q What did you do after you put your hand on  
3 his hand?

4 A After he suddenly reached for the jacket,  
5 I put my hand on top of his hand, feeling that large  
6 bulge inside, which could have been a blackjack.

7 Q Was it a hard object?

8 A Yes, it was not metal hard but it was hard.  
9 It could have been the substance of a blackjack.

10 Q It could have been anything other than metal;  
11 isn't that right?

12 A Yes.

13 Q And it could have been a rubber object;  
14 isn't that true?

15 A Yes.

16 Q It could have been paper; isn't that true?

17 A All stuffed together, yes, sir.

18 Q It could have been anything but a metal  
19 object?

20 A Yes, sir.

21 Q It certainly wasn't a gun or knife, in your  
22 experience as an officer; isn't that true?

23 A That's true.

24 Q When you did that, did you put your hand  
25 inside the pocket itself?



1  
2 A Not at first. I stopped his hand; I felt  
3 a large object.

4 Q Then what did you do?

5 A I told him I would take it out. I didn't  
6 want him to take it out.

7 Q And at that point, he wasn't under arrest,  
8 was he?

9 A No, sir.

10 Q But you reached in there and took it out?

11 A Yes, sir.

12 Q By the way, when you did that, what did  
13 you take out; a paper?

14 A No, sir.

15 Q What did you take out?

16 A I took out a package, which was about six or  
17 eight inches long; about an inch and a half to two inches  
18 wide.

19 Q Wrapped in tape?

20 A No, wrapped in masking tape.

21 Q Tape; that would be this object?

22 A Yes.

23 MR. LAIFER: I don't want to open this  
24 object, because it's heroin. Could we have it  
25 deemed marked Defendant's Exhibit C for the purposes

1  
2 of his hearing?

3 THE COURT: Yes.

4 (Thereupon Defendant's Exhibit C was deemed  
5 marked in evidence.)

6 Q This is the object we are talking about?

7 A Yes, sir.

8 Q You could not see inside of that object?

9 In other words, it was not glassene or translucent, or  
10 anything of that nature; isn't that right?

11 A That's right.

12 Q When you took that object out of his pocket,  
13 you knew it was no longer a gun or a blackjack or anything  
14 of that nature; isn't that true?

15 A I knew it was drugs, sir.

16 MR. LAIFER: I move to strike the answer as  
17 not being responsive.

18 THE COURT: Not responsive; that's right.

19 Q When you took the package out, could you see  
20 what was in it?

21 A No, sir.

22 Q You knew it was no longer a blackjack; isn't  
23 that true?

24 A Yes, sir.

25 Q When you felt it out of his pocket, it was



1  
2 pliable; isn't that true?

3 A Yes, sir.

4 Q In your hand, that you knew?

5 A Yes, sir.

6 Q Now, where was the security guard at this  
7 time?

8 A There was no security guard there.

9 Q You didn't call the security guard yet?

10 A No, sir.

11 Q There was nobody there from the airport; a  
12 uniformed officer?

13 A A police officer, yes.

14 Q Where was he, at this time?

15 A About twelve feet behind me.

16 Q When had he been called down?

17 A He had been called down a few minutes  
18 earlier.

19 Q Who had called him down?

20 A I testified that I told the taxi dispatcher,  
21 who was passing by, to get the police officer outside the  
22 terminal.

23 Q At the time Eddie Fiquelmy put his hand on  
24 that jacket, that other officer, the uniformed man, was  
25 already downstairs; isn't that true?



1  
2 A Yes, sir.

3 Q You were standing there; isn't that correct?

4 A Yes.

5 Q Did he have his gun drawn?

6 A No, sir.

7 Q Did he have his gun on?

8 A Yes, sir.

9 Q And his gun was visible; isn't that true?

10 A Yes, it's part of the uniform.

11 Q He was there for what purpose?

12 A To be a witness for me, in the event of any  
13 action.

14 Q What do you mean, a witness? What are you  
15 talking about? A witness for what?

16 A Anything could have happened. One of the  
17 suspects or defendants could have said I took his money.  
18 I like to have a witness when I am questioning people.

19 Q You had been questioning these people for  
20 some time; isn't that right?

21 A The dispatcher came right at the beginning,  
22 when I wanted a police officer, a witness. My partner  
23 hadn't responded to the page, but I wanted to have a  
24 witness.

25 Q Why didn't you use the taxi driver as a



1  
2 witness?

3 A He is not a law enforcement officer.

4 Q So, you wanted another law enforcement officer  
5 there?

6 A Someone who would be understanding of what  
7 was taking place.

8 Q A taxi driver wouldn't understand?

9 A Certainly not.

10 Q Not when all you are asking people for is  
11 identification?

12 A He wouldn't have any idea as to what my job  
13 is, I have a little idea of what his job is.

14 Q The Port Authority police officer or police  
15 officer would know what your job is?

16 A He certainly would understand that I was  
17 questioning these people about identification, and that I  
18 wasn't satisfied with what I had.

19 Q You had already identification from Candido  
20 Riquelmy and the other defendants?

21 A Yes, sir.

22 Q You also had partial identification from  
23 Eddie Riquelmy; the union card?

24 A They didn't ask for the identification back.

25 MR. LAIFER: That's not responsive.



THE COURT: Answer his question.

Q You asked for identification and you had it; isn't that true?

A That's correct.

Q Now, that guard, when he was standing there, did he have his hand on his gun?

A Not that I recall.

Q Well, you don't recall or he didn't?

A I don't recall.

Q But he was within a few feet of these men, and he had a gun; isn't that right?

A Yes, sir.

Q Now, after you had this package in your hand, and you felt it, and you knew it was no longer a weapon; isn't that true?

A That's true.

Q Did you put it back in the jacket?

A No, sir.

Q What did you do?

A I made a small tear in it with my pen.

Q You punched a hole in it; isn't that right?

A Yes, sir.

Q To observe the contents; isn't that correct?

A Yes, sir.



1  
2 Q And then you poured these contents in your  
3 hand; is that correct?

4 A No, sir.

5 Q What did you do?

6 A I just looked at it.

7 Q You looked at it and smelled it?

8 A I saw it was brown rock.

9 Q That was after you punched a hole in the  
10 bag?

11 A That's true.

12 Q You couldn't see that after removing it from  
13 the jacket, until you did something physically to tear it;  
14 isn't that true?

15 A That's true.

16 Q It was after you saw it was the heroin or  
17 apparently heroin that you did what?

18 A I placed them all under arrest.

19 Q By the way --

20 MR. LAIFER: May I approach the witness,  
21 please, Your Honor?

22 THE COURT: Sure.

23 Q There was only one way out of this airport;  
24 isn't that true?

25 A No, sir.



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Q There are other ways out?

A Three ways out.

Q Where are the other ways?

A One is to the left, over here, and one where the camera is.

Q On A, B and C. Show his Honor. Please mark where the guard, uniformed officer was, with the gun; where he was standing with these men?

A He would have been in the area of where the photographer was, in this photograph.

Q Within how many feet of these men?

A We attempted to measure that out. I attempted to measure it out. I believe, as I recall, it was 16 feet. from the point where the officer was, at point A.

Q He was there to observe what you were doing, as a witness; isn't that right?

A Yes, sir.

Q He was 16 feet away?

A Yes, sir.

Q He was not in the area of these men; isn't that right?

A Yes was in the general area.

Q The general area, but you were right up with



1  
2 them; isn't that true?

3 A Yes, sir.

4 Q At any time in Chicago, did you have any  
5 information that these men had bought their tickets with  
6 small bills at the time you stopped them at the gate?

7 A No, sir.

8 Q At any time, did you have any information  
9 that these men boarded the plane with any heroin?

10 A No, sir.

11 Q You have been a DEA agent for a number of  
12 years?

13 A Yes, sir.

14 Q You were a customs agent for a number of  
15 years; isn't that correct?

16 A Yes, sir.

17 Q Have you seen people come in to this country  
18 with heroin in suitcases?

19 A Yes, sir.

20 Q Have you seen people come in to this country  
21 with heroin in attache cases?

22 A Yes, sir.

23 Q Intracontinental; within the continent, have  
24 you seen people toting it in with attache cases and  
25 suitcases?

1  
2 A Yes, sir.

3 MR. LAIFER: No further questions.

4 THE COURT: Any other questions?

5 MR. JACOBS: May I briefly cross-examine,  
6 Your Honor?

7 THE COURT: Try not to go over the same  
8 material.

9  
10 (continued on next page)  
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## 1 2 CROSS-EXAMINATION

3 BY MR. JACOBS:

4 Q Agent Whitmore, it was your understanding  
5 that these defendants, who entered Kennedy Airport, had  
6 come from Chicago; is that correct?

7 A Yes, they came in LaGuardia.

8 Q They came, in fact, from an airport in  
9 Chicago; right?

10 A Yes, sir.

11 Q Is it your understanding that under Federal  
12 regulations, that airport in Chicago was required to make  
13 metal detection inspections of the defendants prior to  
14 their boarding a plane, the one they alighted from in  
15 New York?

16 A Yes, sir.

17 Q And when Riquelmy -- Eddie Riquelmy had this  
18 coat on his arm, and you saw it on his arm, didn't you know  
19 at that time that coat, that person, those defendants,  
20 had previously gone through a metal detection in Chicago?

21 A Yes, sir.

22 Q Nevertheless you had to go into that coat  
23 to search for a weapon?

24 A Yes, sir.

25 Q You weren't satisfied with Federal regulations,

2 or Federal inspection in Chicago? You wanted to check it  
3 for yourself?

4 A No, because I know the defects in the  
5 screening devices.

6 Q You will show me now how Eddie Riquelmy had  
7 this coat wrapped up in his left arm.

8 A Yes, sir. Like this. (Witness indicating.)

9 MR. LAIFER: For the record, may we show  
10 that the coat is open, the outer side is out, and it  
11 is folded over once.

12 THE COURT: All right.

13 Q Now, let me, if I may, would it be accurate  
14 for me to hold it in this manner? Would that be more or  
15 less similar to the way Eddie Riquelmy held it, on the day  
16 of the incident, and if not, you tell me what I should  
17 change?

18 A As I recall, it was more like this (witness  
19 indicating).

20 Q And with his right hand, he went in or towards  
21 the coat?

22 A Yes, sir.

23 Q How far did his hand get to the coat, before  
24 your hand went above it?

25 A There was a pocket showing, like this.



Q Where was his right hand; in here?

A That's right.

Q Where did your hand go?

A I just stopped him.

THE COURT: You better put it on the record.

The only one knowing what it is is me.

MR. JACOBS: That's the most important.

THE COURT: The three judges upstairs can't

visualize it like I am.

Q Held by the left hand with all my five fingers

on the right hand, palm down, to the inside of the coat;

is that accurate?

A Yes.

Q Where was his hand when Riquelmy --

THE COURT: The agent is placing his right

hand on the attorney's, demonstrating holding the

coat.

Q It was at that point, for the first time, you

felt a hard object below Eddie Riquelmy's hand?

A He held it in here.

Q Did your hand hit the jacket or did it cover

Mr. Riquelmy's hand completely?

A His hand was moving. I pushed down on it and

felt the object. I felt the object, hand and jacket at the

1 same time.

2  
3 Q It was the object next to his hand, not only  
4 his hand?

5 A Yes, sir.

6 Q Did you ask Mr. Riquelmy, at that point,  
7 "What do you have in your coat?"

8 A I said, "I will get it out."

9 Q Did you tell Mr. Riquelmy at that point that  
10 he didn't have to give his coat to you?

11 A No.

12 Q Did you advise him that he did not have to  
13 do anything, at that point?

14 A No, sir.

15 Q Now, you testified that when you approached  
16 Mr. Riquelmy by the taxi stand, and you had conversation  
17 with him, you noticed he had an airline ticket in his  
18 pocket?

19 A Yes, sir.

20 Q Which pocket?

21 A It was his rear pocket.

22 Q And you saw that clearly, and you identified  
23 that in your mind to be an airline ticket?

24 A I saw the blue folder sticking out.

25 Q You testified that Eddie Riquelmy told you



5 1 that he had left his ticket on board. He didn't have it  
2 with him?  
3

4 A Yes, sir.

5 Q Did you ever tell Eddie Riquelmy or suggest  
6 to Eddie Riquelmy that he in fact had the ticket in his  
7 back pocket and you would like to see it?

8 A Not outside. When he got inside, he still  
9 told me that he didn't have the ticket and I informed him  
10 that the ticket was in his rear pocket.

11 Q What happened then?

12 A He like hesitated and took it out.

13 Q He gave it to you?

14 A Yes, sir.

15 Q Did you ask him for it?

16 A Yes, sir.

17 Q It was after you asked for it that he gave  
18 it to you?

19 A Yes, sir.

20 Q Was this Port Authority Police Officer present  
21 at the time that you placed your hand on Eddie Riquelmy's  
22 hand and jacket?

23 A Yes, sir.

24 Q Was his gun drawn at that time?

25 A No, sir.

2 Q Was he facing your direction at that time?

3 A Yes, sir.

4 Q Was he visible to Eddie Riquelmy?

5 A He should have been.

6 Q Was there anything obstructing yours and  
7 Mr. Riquelmy from that officer's view in your opinion?

8 A I don't know. I didn't stand where he was  
9 and look at what he was looking at.

10 Q How many feet from you was he?

11 A About fifteen or sixteen.

12 Q Did you call him over, after you made your  
13 discovery?

14 A No, sir.

15 Q He stayed there?

16 A Yes, sir.

17 Q You called him over, nevertheless, for him  
18 to be a witness to any search that might occur?

19 A For my own protection, also.

20 Q Nevertheless, he remained fifteen feet from  
21 you?

22 A When I mean protection, I didn't take anything  
23 from anyone, that I shouldn't, or did anything that wasn't  
24 supposed to have been done, like strike someone or take  
25 something from someone, and have allegations come up at



7 1 some other time.

2  
3 Q He never got any closer than fifteen feet,  
4 even when you searched Eddie Riquelmy's jacket?

5 A No, sir, because he was observing all three  
6 defendants.

7 Q You were concerned about allegations that  
8 had been made against the DEA by defendants?

9 A Yes, sir.

10 Q Did any of these three need medical attention,  
11 after your questioning?

12 A Yes, sir.

13 Q Who was that?

14 A Felix Lopez.

15 Q Why was that?

16 A There was something wrong with his finger.

17 Q It was broken, wasn't it?

18 A It was cut.

19 Q Who cut his finger?

20 A He said it was cut.

21 Q He cut his finger, when he was thrown up  
22 against the phone, wasn't it? He was never thrown up  
23 against the phone by you?

24 A After his arrest, he was searched by the  
25 phones.



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Q He wasn't forcibly thrown against a phone?

A Not the way I describe it.

Q You describe it.

A He was put near a phone and searched.

Q Handcuffed behind him or in front of him?

A I believe he was handcuffed behind him.

Q You don't know to this date that his finger was broken?

A No, sir.

MR. JACOBS: No further questions.

CROSS-EXAMINATION

BY MR. LINKER:

Q Agent, I address myself to the second bag that was found on top of the telephones.

A Yes, sir.

Q That was later found to contain a substance called the lactose?

A Yes, sir.

Q Lactose is not illegal, is it?

A It's an adulterant.

Q Nothing illegal about it, itself, is there?

A No, sir.

MR. LINKER: No further questions.

THE COURT: All right, any other questions?



MS. FIELDS: Can I just ask a couple more questions?

THE COURT: Sure.

REDIRECT EXAMINATION

BY MS. FIELDS:

Q Agent Whitmore, you stated that once you had gotten into the baggage area, you looked at Eddie Riquelmy's airline ticket?

A Yes, sir.

Q Did the ticket have the same name as the identification which he gave you?

A No, ma'am, not at all.

Q When you pulled the package from the coat, you indicated that it was wrapped in a masking tape; is that correct?

A Yes, ma'am.

Q At that time, before puncturing it, could you tell us whether or not you knew what was in the package?

MR. LAIFER: Objection to what he says now. It wasn't translucent or transparent.

THE COURT: I will allow it.

A I had a good idea, from my experience of seeing many, many of these packages that contain narcotics.

Q And finally, the defendants were not fully



1 searched until after you notified them that they were under  
2 arrest; is that correct?  
3

4 A Yes, ma'am.

5 MS. FIELDS: That will be all.

6 THE COURT: You may step down.

7 MS. FIELDS: The Government rests.

8 MR. LAIFER: We call the back-up officer  
9 who is outside.

10 MS. FIELDS: He is up in my office, if we  
11 can have him called --

12 THE COURT: All right, the Government rests.

13 (Time noted, 3:00 P.M.)

14 MR. LAIFER: Excuse me, your Honor. I'm  
15 sorry, Sir. While we are waiting may I see the  
16 DEA six reports or any reports filed by this officer,  
17 in connection with this?

18 THE COURT: Did you turn them over? You are  
19 talking about 3500 reports?

20 MR. LAIFER: I understand this is a hearing,  
21 your Honor.

22 THE COURT: They can refuse.

23 MR. LAIFER: They can refuse, under the  
24 Jenks Act?

25 MS. FIELDS: We would refuse under the



1 Jenks Act.

2 MR. JACOBS: May he use it to refresh his  
3 recollection?

4 THE COURT: If you use them on the witness.  
5 stand, you would have a right to use them, regard-  
6 less of who made them.

7 W I L L I A M T O W N S, having been duly sworn by the  
8 Clerk of the Court, was examined and testified as  
9 follows:

10 DIRECT EXAMINATION

11 BY MR. LAIFER:

12 Q Good afternoon, Officer.

13 THE COURT: You are not being called, at  
14 this time, by the Government. You are being called  
15 by the defendants on this hearing.

16 Q Do you recall March 17 of 1977?

17 A Yes, I do.

18 Q Do you recall receiving a communication to  
19 go to the area of American Airlines Terminal?

20 A Yes, I do.

21 Q And who called you to go there?

22 A A taxi dispatcher.

23 Q And what time did you arrive there?

24 A Approximately 1:00 o'clock.

25 Q By the way, did you make any memo book



1 entries, in connection with his arrest?

2 A Yes, I did.

3 Q May we have those, please?

4 THE COURT: Do you have them?

5 THE WITNESS: I have the memo book.

6 Q Are any reports you may have filed?

7 A I did file some reports, but I don't have  
8 them with me.

9 MR. LAIFER: We will do the best we can.

10 THE COURT: Is that it? Show him that page.

11 That's all you put down?

12 THE WITNESS: Right. I made a brief here.

13 MS. FIELDS: I would like to see it.

14 (Witness showing document to Ms. Fields.)

15 Q All right, you arrived at that area at 1:00  
16 o'clock; is that right?

17 A Yes.

18 Q What did you observe at that time?  
19 Where were these three defendants?

20 A They were by the entrance to the baggage area.  
21 It was near the staircase, off the far side of the building  
22 of American Airlines.

23 Q Were they separated or were they together?

24 A At the time I entered they were closer  
25



1  
2 together than they were from the --

3 Q Were they in a group?

4 A You might say that. I shouldn't say a  
5 tight group, but three people, plus the agents.

6 Q Agent Whitmore was with them; isn't that  
7 right?

8 A That's correct.

9 Q And at that time, were the defendants told  
10 to separate and to stand near separate phones?

11 A No, I don't recall.

12 Q Let me show you that exhibit, if I may,  
13 Officer. It's Government's Exhibit 1 in evidence. Does  
14 this area appear familiar to you?

15 A Yes, it does.

16 Q Do you recall the defendants being spread  
17 out at these various locations, in that manner?

18 A Not in that manner. When I came in, they  
19 were like -- there was one over the rail, over here, and  
20 there was like maybe one here, and probably one just about  
21 the door.

22 Q Between the A and the C?

23 A Not between the A and C; right over here.

24 Q Where the door is located?

25 A Right.



Q And when you were called down, did you have a conversation with Agent Whitmore?

A No. In other words, when I came in he said he was seeking additional identification about these people and Eddie -- you want me to name anyone?

Q Yes.

A He had an individual Eddie Riquelmy over there. He was seeking additional identification and while he was going through his jacket, he fumbled with it and said, "Wait a minute. Let me take a look at that," and he brought it out --

Q Where was that jacket he was going through?

A Over his arm.

Q When the jacket was over his arm -- was that over Mr. Eddie Riquelmy's arm?

A That's correct.

Q When the jacket was over his arm, was it folded in this manner, over his arm?

A It was folded over his arm.

Q Indicating half-way over his arm?

A Approximately like that.

Q Was he ever clutching the jacket, like this?

A I recall it being over his arm.

Q In a draped fashion?



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A Yes.

Q When it was draped over his arm, what did you see?

A I saw him going to it, and, you know, he kept reaching in there, so the agent said, "Hold it. Let me get that for you." And he took the jacket.

Q He took it away from him?

A He took it away from him and found a lump in there.

Q The agent physically took the jacket away from Mr. Riquelmy?

A That's correct.

Q And held it in his own hands; is that correct?

A That's correct.

Q And searched it; is that correct?

A Right. He felt a lump in there and --

Q You keep saying lump. The point is, did the agent take the jacket away from Eddie Riquelmy, and then search it?

A When you say search it, you mean pat it?

Q Pat it, yes.

A Yes, he did.

MR. LAIFER: I have no further questions.

MR. LINKER: No questions.

MR. JACOBS: No questions.

(Continued on next page.)



## CROSS-EXAMINATION

BY MS. FIELDS:

Q Officer Towns, when you first observed Eddie Riquelmy and Agent Whitmore, where were the other two defendants?

A They were in the nearby area.

Q Did you observe all four individuals at the same time?

A I could, when I first came in.

Q Okay.

At the time when the agent was speaking with Eddie Riquelmy, were all the defendants in the same place, as when you originally came in?

A When I originally came in?

Q Yes.

A No; they sort of spread apart a little; just a little though.

Q And could you see everybody at the same time?

A Right where I was standing, in back.

Q You were standing further away from them?

A Yes.

Q Where was Agent Whitmore in relation to you? Was he facing away from you?

A He was over to my right, and away. He was



1  
2 talking with Eddie Riquelmy.

3 Q His back to you?

4 A Yes, partly.

5 Q And where was Mr. Riquelmy in relation to you?

6 A He was off to the right, also.

7 Q And was he facing you or was his back to you?

8 A He was right to the side.

9 Q He was to the side? Okay.

10 You stated you observed the agent questioning  
11 Eddie Riquelmy; is that correct?

12 A Right.

13 Q And did you hear him ask him for further  
14 identification?

15 A Yes, he was asking for further identification.

16 Q And did you see Eddie Riquelmy move?

17 A Well, you know, when he asked for additional  
18 identification, he started going through his jacket and  
19 that kind of movement.

20 Q Could you tell me whether or not you saw the  
21 agent stop him from going into his jacket?

22 A Yes, in other words, he was there with the  
23 jacket, and he said "look, the jacket."

24 Q And --

25 MR. LAIFER: Let him answer.

1  
2 THE COURT: Did you finish your answer?

3 THE WITNESS: I am just to the jacket, at  
4 that point.

5 Q Did you see him do anything, before he took  
6 the jacket? Did you see?

7 A I didn't see him do anything with the jacket,  
8 before he took it.

9 Q You didn't see him do anything with the jacket,  
10 before he took it? Did you see him touch the jacket before  
11 he took it?

12 A Not at that point. It was over his arm.

13 Q Did he touch the jacket while it was on  
14 Mr. Riquelmy's arm?

15 A Only when he went to take it.

16 Q Only when he went to take it; was there one  
17 or two actions?

18 MR. LAIFER: I don't understand the ques-  
19 tion.

20 Q You say he went to take the jacket. What  
21 did you see? You saw what? Did you see him reach towards  
22 the jacket?

23 MR. LINKER: Objection. Already asked and  
24 answered.

25 A It would seem like one action to me.



1  
2 Q That one action, tell us whether or not this  
3 is true: You said you saw him reach towards the jacket and  
4 did he touch the jacket at that time?

5 A Yes, he did. He separated the jacket from  
6 the person.

7 Q And he just took it without anything further?

8 A Well, are you talking about now, as far as  
9 the object in the pocket being concerned?

10 Q I am asking you what he did with the jacket?

11 A He took the jacket and then, when, you know,  
12 he patted it, he felt that particular lump in there.

13 Q And did he then take the package out?

14 A Yes, he did.

15 Q And you saw him feel the package?

16 A Right. I saw him hold the package.

17 Q And the other defendants were where, at this  
18 point?

19 A Well, they were along the wall, you know.

20 Q And were you also watching them?

21 A I was watching them, but I just happened to  
22 be watching this, particularly, though.

23 Q But you did see -- okay.

24 Going back to the jacket, you were observing  
25 the Agent with his back to you, and Eddie Riquelmy facing

1  
2 you. You observed the agent touch the jacket and take it  
3 and that's what you saw, and you are 15 feet away, approxi-  
4 rately?

5 A About, I would say.

6 Q And did you hear any conversation that was  
7 going on at that time?

8 A Well, outside of, you know, he wanted that  
9 additional identification, and it was just like a moment  
10 there, when there was no communication at all. In other  
11 words, like, this activity with going through the jacket,  
12 and he said, just said, "look," and took the jacket.

13 Q Had you seen -- can you tell me before the  
14 Officer reached for the jacket, did you see Eddie Riquelmy  
15 reach into the jacket?

16 A I saw him reaching into the jacket.

17 Q And the agent stopped him from reaching in --

18 MR. LAIFER: I object.

19 MR. LINKER: It's already been asked and  
20 answered numerous times. I would like the officer  
21 to testify, not the District Attorney; U. S.  
22 Attorney.

23 THE COURT: Sustained.

24 Go ahead.

25 Q Could you also tell us when you went in, what



1  
2 were the other two defendants doing at the time you walked  
3 into the baggage area?

4 A Well, they were standing around.

5 Q They were standing around?

6 A Yes.

7 Q In what kind of attitudes were they standing  
8 around?

9 MR. LINKER: Objection.

10 THE COURT: What?

11 MR. LAIFER: Position, I think counsel  
12 means.

13 A One was standing slouched over like and I  
14 thought everybody there was like very casual. When I saw  
15 one fellow, he was leaning on the rail; the other slouched  
16 up against the wall. You know, nothing -- I mean they  
17 weren't standing erect or anything.

18 MR. LAIFER: There is no question that  
19 one was leaning on the railing; isn't that right?

20 THE WITNESS: No.

21 Q That was at the time the agent took the  
22 jacket away from Mr. Eddie Riquelmy?

23 A He wasn't leaning. When I came in the door,  
24 he was leaning on the door.

25 Q Where was that man when Agent Whitmore took the



1  
2 jacket away from Mr. Eddie Riquelmy?

3 A You are talking about Eddie Riquelmy?

4 Q Yes.

5 A He was standing next to the railing, at this  
6 time.

7 Q When the agent took the jacket away?

8 A That's correct.

9 Q After the agent took the jacket away from him,  
10 and searched the pocket, he came out with a package; is that  
11 right?

12 A Right.

13 Q Did you see what he did with the package, then?

14 A He poked open the package and looked at it  
15 and said, "It's heroin, brown heroin," or something along  
16 the line.

17 Q At that time, what happened to Mr. Lopez?  
18 How did the hand get hurt?

19 A What?

20 Q Finger get hurt?

21 A I have no idea.

22 Q Did you see his finger get cut or broken?

23 A No, I didn't.

24 Q Did you see him handcuffed?

25 A No, I didn't.



1  
2 Q At the time the agent was searching Eddie  
3 Riquelmy, did you have your eyes on Candido and Lopez?

4 A No, not as much as I was watching the activity  
5 on the corner, over there.

6 Q Everyone was within feet of each other?

7 A You can see them, peripherally.

8 Q You were there to watch them, in other words?

9 A That's correct.

10 THE COURT: Thank you very much for your  
11 testimony.

12 All right. You may step down.

13 MR. LAIFER: We recall the agents, your  
14 Honor.

15 THE COURT: All right, step back up.

16 G E R A R D W H I T M O R E , having been previously  
17 duly sworn, was examined and testified further as  
18 follows:

19 DIRECT EXAMINATION

20 BY MR. LAIFER:

21 Q Now, you testified before on direct examination,  
22 Agent, that a portion of the thing that called your atten-  
23 tion to these men was that they were not talking to each  
24 other, as they were walking?

25 A That's right.



1  
2 Q That was important to you, in your determina-  
3 tion as to whether to go over to them?

4 A That's one of the things, yes, sir.

5 Q Now, I show you this document --

6 MR. LAIFER: Could we have this marked for  
7 identification, sir?

8 THE CLERK: Marked for identification,  
9 Defendant's Exhibit C, document.

10 MR. LAIFER: Thank you, very much.

11 May I approach the witness, please, your  
12 Honor?

13 THE COURT: Yes.

14 Q I show you this document and ask you: Is  
15 this document something you have seen before, that is an  
16 affidavit made by you, even partially in your handwriting?

17 A Yes, sir.

18 Q And that is your handwriting on the top of  
19 the document here; isn't it?

20 A No, not here.

21 Q What about on the next page; is this your  
22 handwriting?

23 A Yes, sir.

24 Q And you wrote that in your own hand, didn't  
25 you?



1  
2 A Yes, sir.

3 MR. LAIFER: If I may, excuse me, I am  
4 offering this document into evidence, at this time.

5 MS. FIELDS: No objection, your Honor.

6 MR. LAIFER: If I may, with your Honor's  
7 permission, it being in evidence --

8 Q In your own handwriting, did you write the  
9 following: "When disembarking from the aforementioned  
10 flight, the three defendants engaged in conversation, walk-  
11 ing together to the taxi stand. During the brief investi-  
12 gation, the defendants had consecutively numbered tickets  
13 and upon questioning, stated they were traveling together."

14 Did you say that in your own handwriting,  
15 that they were talking together as they were walking?

16 A I made this at the direction -- conferring  
17 with the United States Attorney, Ron Russo.

18 MR. LAIFER: I move to strike the record  
19 as not responsive.

20 THE COURT: Strike it. It's not responsive.

21 Q Is this in your handwriting and did you write  
22 those words, that they were walking and talking; yes or no?

23 A Yes, sir.

24 MR. LAIFER: No further questions.

25 THE WITNESS: Can I explain --



1  
2 THE COURT: You can't.

3 MR. LAIFER: I would like to hand this  
4 up to your Honor.

5 One more thing, before I forget.

6 Q This gentleman here, this police officer was  
7 all wrong about the coat being draped over Eddie Riquelmy's  
8 arm; is that right?

9 A I don't know what he saw.

10 MS. FIELDS: He can't testify. I object to  
11 him asking the agent to characterize --

12 THE COURT: The form of the question is  
13 he was all wrong.

14 Q That was incorrect, that it was draped over  
15 Eddie Riquelmy's arm; is that right?

16 A I don't know at which point he was referring  
17 to.

18 Q It was incorrect that you took it away from  
19 him?

20 A It was correct that when I put my hand on the  
21 jacket I felt something, the bulge in it. I asked him for  
22 the jacket. I said, "Let me take it out."

23 MR. LAIFER: All right, no further questions.

24 THE COURT: All right.

25 CROSS-EXAMINATION



BY MS. FIELDS:

Q Concerning the defense's exhibit --

MS. FIELDS: What number is that?

MR. LAIFER: It's defendant's exhibit C, I believe it is.

THE CLERK: "C" .

Q Defendant's Exhibit C, okay, can you tell me whether or not the statement at the top of the exhibit, which defense counsel read to you, is correct?

A Yes, ma'am, if I may explain to you.

Q Yes.

MR. LAIFER: I object to his explaining. It's his own handwriting in an affidavit that was prepared by him. The control evidence rules apply.

THE COURT: It is his statement.

MR. LAIFER: I remember in law school from 18 years ago. He told me the control evidence rule; I don't even remember it.

Q The statement is in your handwriting; isn't it?

THE COURT: It unfortunately is a part of it. You can't explain something, in order to modify or change the meaning of something

1  
2 that you wrote. I know. I'm out of law school  
3 33 years, but I don't forget that one. Whether  
4 it be an affidavit or any other piece of paper,  
5 you are not allowed to modify or explain it in the  
6 manner you have written. You are bound by whatever  
7 the statement is.

8 MS. FIELDS: We are not modifying.

9 THE COURT: You want to explain why you  
10 put it in there? Does it mean what it says?

11 THE WITNESS: Substantially, yes.

12 THE COURT: You see --

13 THE WITNESS: At the time it was drawn up,  
14 Magistrate Klein found that affidavit insufficient.

15 MR. LAIFER: I withdraw the objection.

16 MR. LINKER: Let him explain that.

17 THE COURT: I'm afraid that we have to go  
18 to the nows to explain this.

19 You mean to say that the Magistrate told  
20 you to put something else in there? If you don't  
21 want to say anything, I think you'd better stay  
22 away from the explanation. I would feel much  
23 more comfortable not having the explanation.

24 MS. FIELDS: Your Honor, I don't want to  
25 go into the explanation.



1  
2 THE COURT: Are you saying that at the time  
3 that he looked at it, did he tell you that the  
4 affidavit was not sufficient, in order for him to  
5 do what? Was he supposed to be doing something,  
6 and relying on the affidavit in anyway? That's  
7 how we can create prob. . .

8 Q When you refer to the affidavit, are you  
9 talking to the typed parts, not including the handwritten  
10 portion?

11 A That's correct.

12 Q Are you indicating that the handwritten por-  
13 tion was then added to the affidavit, before it was accepted?

14 MR. LAIFER: That's all leading.

15 THE COURT: I will allow it. Just to  
16 clear the air on the record.

17 MR. LAIFER: We will concede that the  
18 Magistrate Klein is one of the finest gentlemen.

19 THE COURT: We all concede that.

20 Go ahead.

21 Q Agent Whitmore --

22 THE COURT: Don't look so bewildered.

23 Q Agent, can you tell me, this statement, can  
24 you further tell me whether or not this written portion of  
25 the statement indicates when any of these actions were done?

1  
2 MR. LAIFER: It's in evidence, and speaks  
3 for itself. We object to that.

4 THE COURT: Is that your language on that  
5 affidavit, that when they were exiting the air-  
6 plane, they were in conversation?

7 A I said exiting the terminal. I wrote that  
8 down at the time.

9 THE COURT: What does that say. Read  
10 it to me, please, again. I think it says exiting  
11 the airplane, I believe; the flight.

12 MR. LAIFER: Right.

13 THE COURT: Disembarking; same thing.  
14 All right.

15 Q Agent Whitmore, at the time when you saw the  
16 defendants, to the best of your knowledge, at this point,  
17 were they talking together while walking outside the terminal?

18 A No, ma'am.

19 MS. FIELDS: That's all.

20 MR. LAIFER: We have no further questions  
21 of this witness.

22 THE COURT: No further questions?

23 MR. LAIFER: We respectfully rest at this  
24 time.

25 THE COURT: Any other witnesses or



1  
2 testimony?

3 MR. LAIFER: No.

4 At this time, on behalf of the defendant  
5 Candido Riquelmy, Mr. Riquelmy respectfully moves  
6 to suppress all evidence seized in connection with  
7 this case, on the grounds that his fourth and 14th  
8 Amendment Constitutional Rights were violated and  
9 respectfully moves that your Honor exclude from  
10 trial, all evidence seized from himself and from  
11 his brother, and a certain lactose substance  
12 seized from nowhere, apparently on a telephone.

13 THE COURT: I think he said he saw them  
14 put it up there.

15 MR. JACOBS: Nobody every saw anybody.

16 THE COURT: Nobody saw him do it?

17 MR. LINKER: It was just found on top of  
18 the telephone.

19 THE COURT: You'd better step up here and  
20 become part of the proceeding.

21 MR. LINKER: I join in the same motion.

22 MR. JACOBS: We all join in the motion.  
23 I believe under the discovery provided by  
24 Ms. Fields, there was a statement attributed to  
25 my client, so likewise, I would move for the

1 suppression of that statement as being poisonous  
2 fruit of unlawful search and seizure; it was made  
3 subsequent to the actual arrest.

4 THE COURT: What do you have to say?

5 MS. FIELDS: The Government would oppose  
6 all the motions. The Government feels that the  
7 arrests and the subsequent searches of all three  
8 defendants were proper. The initial contact  
9 of the agent with the defendants, right outside,  
10 at the taxi stand, was a proper investigative  
11 stop on the part of the agent. It was --

12 THE COURT: That becomes a proper stop,  
13 only if there is reasonable suspicion, in order  
14 to start your investigatory attitude, and that  
15 is going over and asking for identification. It  
16 seems like the law isn't a complete state of  
17 klutz, but it's worse than that, as far as search  
18 and seizures at airports. Suspicion is sufficient,  
19 provided it's reasonable.

20 Then, we come to a very, very serious  
21 question. If the suspicion is reasonable, was  
22 the frisk within the standard of search and seizure?

23 MR. LAIFER: May I be heard on that?

24 THE COURT: Generally, I would make it  
25 from the bench, but I doubt very much I will determine



1 this one from the bench. I want the Government  
2 and defense lawyers to submit a brief and from  
3 that I will be able to make my determination. I  
4 can't make it solely on the testimony.

5 MR. LAIFER: We would say, more than that,  
6 your Honor, of course your Honor is well aware  
7 of the law since Mapp against Ohio, that you  
8 cannot search an individual, unless that indi-  
9 vidual is under arrest.

10 THE COURT: You are talking about some-  
11 thing different now. We are talking about a  
12 profile situation. Creating a profile of an  
13 individual, which may lead to suspicion and  
14 that suspicion may lead them to believe a crim-  
15 inal act has been committed. That's Terry  
16 versus Ohio.

17 (Continued next page.)  
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ollows

1 MR. LAIFER: In the area of profile searches,  
2 this would be the most extensive, to hold it good,  
3 this would be the most extensive application of  
4 that doctrine. In every profile search, there has  
5 either been, in the various cases, for example,  
6 in Michigan, there has been a knowledge. That is  
7 why I asked the question, that the individuals  
8 bought tickets for a particular flight with small  
9 bills, or that there was a mass shown on the x-ray  
10 machine as it went through the security processes,  
11 on the boarding of the plane.

12 THE COURT: That is something different.  
13 That's foreign countries.

14 MR. LAIFER: Or there was a hotel that was  
15 rented for a specific purposes. Here, all you have --

16 THE COURT: No; no. An airport suspicion  
17 is a little different. An airplane suspicion is  
18 suspicion to profile the individual, the actions  
19 and attitudes of the individual, going through --  
20 disembarking from the plane; going through the  
21 terminal might give rise to a reasonable suspicion.  
22 It might. Nervousness. Twitching of heads, eyes  
23 and looking like they are looking around to see what  
24 is going on, to see if there is a policeman following  
25 them, and that kind of business.



1 MR. LAIFER: I would urge you additionally --

2 THE COURT: You'd better look at the law.

3 MR. LAIFER: I am familiar with the law here,  
4 but additionally, you have a credibility issue.

5 THE COURT: I am throwing out these points  
6 so that when you submit your brief, you will know  
7 what I am looking for and try to disenfranchise your  
8 case from the general cases that are presently in  
9 mind. There is one in Michigan somewhere along the  
10 line.

11 MR. LAIFER: We can differentiate every case.

12 MR. LINKER: All of them require some out-  
13 side cooperation other than seeing three people get-  
14 ting off a plane.

15 MR. LAIFER: There is more than that.

16 THE COURT: It isn't a question of just  
17 three people getting off the plane. It is a question  
18 of whether the three people gave suspicion, within  
19 a certain profile, would be the type of person who  
20 might commit a crime, might be committing a crime  
21 and an investigation to determine whether they are  
22 committing a crime and then goes on to the next  
23 situation.

24 MR. LAIFER: I am aware it is. I would  
25 urge your Honor, one more area, due to the agent and

1 officer who testified and the affidavit that is in  
2 evidence, Defendant's Exhibit C. Additionally, as  
3 your Honor --

4 THE COURT: That is another issue. That  
5 goes to the question of credibility.

6 MR. LAIFER: Which always, always is an  
7 issue not only at trial. If your Honor would be  
8 trying this case nonjury, you would not be trying  
9 it as a Judge of the Law, and also as a Judge of  
10 the facts. I urge your Honor that there are  
11 certain credibility questions which are very  
12 strong as to the draping of the coat, the seizing  
13 of the coat; as to the defendants talking together;  
14 as to the entire contents of the Defendant's  
15 Exhibit C in Evidence, as opposed to People's  
16 Exhibit 1, the photograph of what took place. I  
17 think there are very strong credibility questions  
18 and of course, we will include those.

19 THE COURT: This affidavit was made mainly  
20 for the purpose of having a --

21 MR. LINKER: It's a sworn statement.

22 THE COURT: The question is whether or not  
23 the complaint fits the requirement; whether or  
24 not an affidavit fits the requirement so a  
25 warrant can be issued. These statements could



1 be considered by the Court as a question of  
2 credibility.

3 MR. LAIFER: If indeed the lack of talking,  
4 which was made so much of, was indeed a portion of  
5 reasonable suspicion required by Agent Whitmore,  
6 then his affidavit is a direct variance with that  
7 and your Honor would have to consider that.

8 THE COURT: All right. Well --

9 MR. LAIFER: We will need time to get  
10 the minutes, anyway.

11 THE COURT: We can't pick a jury. We  
12 will have to wait and see what happens.

13 MR. LAIFER: As far as I am concerned,  
14 no matter what happens, I would be willing to  
15 make these minutes, if your Honor denies the  
16 motion, as far as Candido Rilquelmy is concerned.  
17 At the trial, deem it marked for the trial. No  
18 sense of going through it twice.

19 THE COURT: He can plead guilty, with the  
20 right of the Government in absentia, to take an  
21 appeal, and if I should deny.

22 MR. LINKER: I would rather have them  
23 make the whole trial. My client can't plead  
24 guilty because he is not guilty.

25 MR. LAIFER: I am not saying to plead guilty.



1 Your Honor would have to determine whether there  
2 is sufficient evidence.

3 THE COURT: At trial, he would have to sign  
4 a statement that this would be considered a trial,  
5 other than a hearing.

6 MR. LINKER: And waive all jury and everything  
7 else.

8 MS. FIELDS: The Government would have more  
9 evidence at a trial, whether it was stipulated to  
10 or not.

11 THE COURT: You would have more evidence  
12 than you have here?

13 MR. LAIFER: Perhaps we could stipulate  
14 to it.

15 THE COURT: All right. Stipulate. Let  
16 me see what my position is, looking at the brief,  
17 and we can work out the balance. The defendants,  
18 if it becomes a bifurcated trial, the defendants  
19 would have to be here in order to sign written  
20 consents.

21 MR. LINKER: How much time would your Honor  
22 want for the briefs?

23 MR. LAIFER: We need the minutes, of course.

24 THE COURT: It shouldn't take too long. I  
25 will give you places. You just look up the law.



1 I want a brief for the purpose, mainly for the  
2 purpose, not that I don't know the cases that  
3 are applied to this matter. This Court must have  
4 some indication what you say is different, with  
5 reference to those cases, rather than me telling  
6 you what the law is. We all know what the law is,  
7 under the scircumstances.

8 MR. LAIFER: If your Honor wants us to dis-  
9 tinguish the Michigan case or the other ones --

10 THE COURT: Terry v. Ohio, and you have  
11 a few others. Maybe we ought to start you in the  
12 right area, so you don't have to go around. The  
13 search and seizure law reports of April 1977, and  
14 I suggest you start with that, and start with page  
15 five. You can start your brief on that, and then  
16 you can decide which way you want to go.

17 It is entitled "Airport Searches Continuing  
18 to Cause Problems".

19 How about two weeks? Would that be enough?

20 MS. FIELDS: Yes.

21 THE COURT: How about May 19? Everyone  
22 appear in court on May 19. Submit the briefs to  
23 me on the 18th, if you can.

24 MR. LAIFER: Yes, sir.

25 THE COURT: On May 19, you appear in court

1 and I will make a determination.

2 MR. LAIFER: Thank you, your Honor. The  
3 defendants are required to appear on May 19?

4 THE COURT: We want the defendants to appear  
5 on May 19.

6 (Thereby the above proceeding terminated at  
7 the time noted: 3:37 P.M.)

8 \* \* \* \* \*

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CRP:VJR:bj  
# 771,337

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

1 EDDIE NATAL RIQUELMI,  
3 FELIX LOPEZ and  
2 CANDIDO NATAL RIQUELMI,

Defendants.

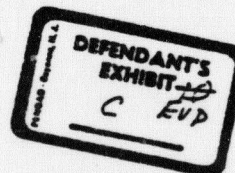
EASTERN DISTRICT OF NEW YORK, SS:

GERARD WHITMORE, being duly sworn deposes  
and says that he is a Special Agent of the Drug En-  
forcement Administration, duly appointed according to  
law and acting as such.

On or about the 17th day of March, 1977,  
within the Eastern District of New York, the defendants  
EDDIE NATAL RIQUELMI, FELIX LOPEZ and CANDIDO NATAL  
RIQUELMI did possess with intent to distribute approx-  
imately 526 grams of heroin, a Schedule I controlled  
substance, in violation of Title 21, United States Code,  
6841(a) (1).

The source of your deponent's information and  
the grounds for his belief are:

(1) Observations of your deponent at the  
American Airlines Terminal, LaGuardia Airport, Queens,  
New York at approximately 10:00 A.M. on March 17, 1977  
at which time he observed the defendants EDDIE NATAL  
RIQUELMI, FELIX LOPEZ and CANDIDO NATAL RIQUELMI dis-  
embark American Airlines Flight 1226 from Chicago to  
exit the terminal.



6

A- 154, 7/652, 75000  
Sail 1, 75000  
2. \$50,000 Security  
3. \$100,000 Security  
March 22, 77 at 2:00  
Hear only Lopez & Linker.

100 When disembarking from the aforementioned flight, the three defendants were engaged in conversation with together in the taxi stand, during the brief investigation the defendants had conversationally numbered their and upon questioning advised they were traveling together.

(2) A brief investigatory stop of the three defendants, by your deponent outside the terminal and a request for identification followed by a search of a coat in the possession of the defendant EDDIE NATAL RIQUELMY, which search disclosed a package wrapped in beige masking tape containing a quantity of a brown rocky substance which field tested positive for heroin.

WHEREFORE, your deponent respectfully prays that the above-named defendants EDDIE NATAL RIQUELMY, FELIX LOPEZ and CANDIDO NATAL RIQUELMY be dealt with according to law.

*E. J. [Signature]*

Sworn to before me this  
17th day of March 1977

United States Magistrate  
Eastern District of New York

A TRUE COPY

U.S.M.

E.D.N.Y.

It was also determined that Lopez and Eddie Riquelmy possessed and carried certain other firearms items.



*Schulman & Laifer*  
COUNSELLORS AT LAW

H. HENRY SCHULMAN  
STEPHEN R. LAIFER  
EDWIN IRA SCHULMAN

156

SCHULMAN & LAIFER  
36 MONTAGUE STREET  
BROOKLYN, NEW YORK 11201

XXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXXXXXXXXXXXX

STER 5-5840  
8855

May 10, 1977

FILED  
IN CLERK'S OFFICE  
U. S. DISTRICT COURT E.D. N.Y.

Honorable Mark A. Costantino  
United States District Judge  
Eastern District of New York  
United States Courthouse  
Cadman Plaza  
Brooklyn, New York 11201

MAY 12 1977

TIME A.M.

P.M.

Re: United States v. Riquelmy  
Indictment No. 77 CR 172

Dear Judge Costantino:

In response to your request after yesterday's hearing on our Motion to Suppress certain evidence seized from the defendants named in the above referred to Indictment we submit in letter form to you the following:

We are aware that your honor is fully familiar with the facts in the Riquelmy case in that same was heard by you only yesterday but a brief review will indicate that on March 17, 1977 the three defendants in this Indictment alighted from a flight coming from Chicago to New York along with approximately between 70-80 other passengers and walked from the tunnel exit at the American Airlines terminal through the front door to a taxi stand outside the terminal building. The entire time from deplaning to arrival at the taxi stand was no more than three minutes.

During the three minute period the defendants did nothing other than look behind them, appear "nervous" and have no luggage. Based upon Agent Whitmore's testimony it is unknown whether they did talk to each other or not because his sworn testimony at the hearing was that they never spoke and his sworn affidavit (defendants Exhibit C) was that they conversed after deplaning and while walking to the taxi stand.

After arriving at the taxi stand doing nothing other than waiting in line for a cab behind several other people they were approached by Agent Whitmore who identified himself as a "Federal Narcotics Officer" and displayed defendants Exhibit A his identification card to the defendants.

(7)



*Schulman & Laifer*  
COUNSELLORS AT LAW

4-157

H. HENRY SCHULMAN  
STEPHEN R. LAIFER  
EDWIN IRA SCHULMAN

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(2)

May 10, 1977

He then asked Candido Riquelmy for identification without ever advising Mr. Riquelmy of his rights and identification was produced. He then asked defendant Eddie Riquelmy for identification and was given a green printed union identification card bearing a photograph which Whitmore testified resembled the defendant and which contained the defendant's name as given to the agent and an accurate physical description. Nevertheless Agent Whitmore was not satisfied with the defendants tendered identification and directed Eddie Riquelmy and his two co-defendants to accompany him back inside the American Airlines terminal near a bank of telephones. Agent Whitmore directed Lopez and the defendant Candido Riquelmy to stand by two separate telephones thereby separating them after there was a conversation in Spanish which he did not understand and did not want to continue.

At this point Agent Whitmore telephoned for his associate who was not present and a Port Authority Police Officer was summoned and stood some 15 feet from him as he conversed with Eddie Riquelmy.

At this point Eddie Riquelmy being asked for further identification reached for his jacket and Agent Whitmore testified that at this point he put his hand on the hand of Eddie Riquelmy and felt a bulky object underneath it. He indicated that he knew the object was not made of metal and could not be a knife or a gun although it could have been a portion of a "soft bowling ball" or as he testified after lunch possibly a black jack. Thereafter, he pulled the jacket away from Eddie Riquelmy and took a sealed package which was not transparent nor translucent from inside said jacket punctured same with a pen and saw brown heroin.

Officer Whitmore's testimony is directly in conflict with the Port Authority Police Officer who testified that Eddie Riquelmy never clutched his jacket and that same was "draped" over his arm and he heard Agent Whitmore testify words to the effect don't worry about it I will look in there for you and then Whitmore took the jacket from his arm and searched it.



*Schulman & Laifer*  
COUNSELLORS AT LAW

A- 158

H. HENRY SCHULMAN  
STEPHEN R. LAIFER  
EDWIN IRA SCHULMAN

(3)

166 Montague Street  
~~XXXXXXXXXXXXXXXXXXXX~~  
BROOKLYN, N. Y. 11241  
ULSTER 5-5840  
5855

May 10, 1977

Up to this point none of the defendants were ever advised of their rights and from the point of questioning at the taxi stand Agent Whitmore had atleast two of the defendants drivers license and personal documents in his possession before walking them into the airline terminal.

This case is strikingly similar to a case just decided in the Sixth Circuit Court of Appeals, U.S. v. McCALEB, decided April 11, 1977. The United States Court of Appeals held that the drug enforcement agents stop of three airline passengers on the ground that the passengers met the Drug Enforcement Administrations "drug courier profile" was illegal.

The Court also held that it was illegal to detain the three passengers at an airport office after the agents learned that their tickets bore names other than their own. The fact that a passenger meets the courier profile is not enough, by itself, to provide the reasonable suspicion necessary to justify a temporary stop.

from

In a case coming down/the United States District Court in Michigan, U.S. v. HUGHES, 409 F. Supp 535 decided March 3, 1976 the Court ordered evidence suppressed under a factual situation more strongly favorable to the Government than in the instant case.

In the Hughes case D.E.A. agents observed Hughes leaving an American Airlines flight from Los Angeles which arrived in Detroit. The agent thought that she resembled a person who had been convicted for possession of four pounds of heroin a short time before. ( In the case at bar there was absolutely no intelligence of any kind concerning any of the three defendants or the flight in question) Mrs. Hughes was smartly dressed in what appeared to be an expensively tailored suit. She appeared nervous and walked fast as she proceeded down the concourse. She picked up no luggage and carried only a small shoulder bag as a purse. As she got into a cab agents stopped her and asked for identification. Her drivers license showed the name of Paula Hughes. Her ticket bore



166 Montague Street

H. HENRY SCHULMAN  
STEPHEN R. LAIFER  
EDWIN IRA SCHULMAN

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BROOKLYN, N. Y. 11241  
ULSTER 5-5840  
5855

(4)

May 10, 1977

D. Wilcox. She was in fact the sister of a person convicted of violating the narcotics laws about two months earlier. Agents asked her to return to the American Airlines baggage agents' room and told her that they suspected her of carrying contraband drugs. Miranda warnings were given to her and agents requested permission to examine her bag. (No Miranda warnings were given in the case at bar and Agent Whitmore never requested Eddie Riguelmy's jacket but instead forcibly seized it from him) After Mrs. Hughes refused she was placed under arrest, the bag was opened and searched and heroin was discovered.

The Michigan Court held that there was no consent given by Mrs. Hughes and in the absence of consent the search and seizure was unlawful not being founded upon probable cause.

\* The question of consent, is of course, always a strong burden for the Government to meet:

" Courts indulge every reasonable presumption against the waiver of fundamental Constitutional Rights". JOHNSON V. ZERBST, 304 U.S. 458

" The People have the burden of proving by clear and positive evidence that consent was given". AMOS V. U.S., 255 U.S. 313; CHANNEL V. U.S., 285 F 2d 217; JUDD V. U.S., 190 F2d 649

The doctrine that submission to authority is not consent and a defendant faced with authority has the right to submit and reserve his defense for Court is clearly the law of the land. \*

Significantly however, the Government has not contended and apparently does not rely upon the theory that these defendants consented to a search. In any event consent will not sustain a search where the consent is the product of an illegal detention. WONG SUN V. U.S., 371 U.S. 471 at Pg. 484.



*Schulman & Laifer*  
COUNSELLORS AT LAW

4 - 160

H. HENRY SCHULMAN  
STEPHEN R. LAIFER  
EDWIN IRA SCHULMAN

166 Montague Street

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BROOKLYN, N. Y. 11241

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May 10, 1977

Clearly, the search and seizures in the instant case must fail because the defendants' Fourth and Fourteenth Amendment Constitutional Rights were grossly violated.

Lastly, it is respectfully submitted that this Court must face certain credibility issues in Agent Whitmore's testimony which was at direct variance with a prior sworn affidavit and the testimony of the Port Authority Police Officer. It is submitted that if this Court disbelieves any portion of Agent Whitmore's testimony then that should be to the detriment of the Government because surely Magistrate Chrein would never tell any agent to improve an affidavit and falsify the facts.

Based upon the foregoing, it is respectfully requested that this Court make an Order suppressing all evidence seized and all statements given.

Respectfully submitted,

SRL:mc

  
STEPHEN R. LAIFER

CC: RHONDA C. FIELDS, ESQ.  
Assistant United States Attorney  
United States Department of Justice  
Federal Building  
Brooklyn, New York 11201

DAVID S. JACOBS, ESQ.  
Attorney for Defendant-Eddie Riquelmy  
166 Montague Street  
Brooklyn, New York 11201

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**FILED**  
IN CLERK'S OFFICE  
U. S. DISTRICT COURT E.D. N.Y.

★ MAY 18 1977 ★

TIME A.M. \_\_\_\_\_  
P.M. \_\_\_\_\_

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

CR No. 77CR172

- against -

EDDIE RIQUELMY, CANDIDO  
NATAL RIQUELMY and FELIX  
LOPEZ,

Defendants.

-----X

DEFENDANT'S MEMORANDUM

LINKER AND LINKER  
225 BROADWAY  
NEW YORK, NEW YORK 10007  
PHONE 233-5370



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-X

UNITED STATES OF AMERICA

- against -

CR. No. 77 CR 172

EDDIE NATAL RIQUELMY, CAND-  
IDO NATAL RIQUELMY and FELIX  
LOPEZ,

Defendants.

-X

DEFENDANT'S MEMORANDUM

THE MOTION

The defendant FELIX LOPEZ joins in the motion of the other defendants to suppress certain alleged narcotic drugs seized from the person of the defendant RIQUELMY after the three defendants were in custody.

THE FACTS

AGENT WHITMORE testified that at LaGuardia Airport he observed the three defendants leave a domestic American

Airlines shuttle flight from Chicago; walking one behind the other in a triangle fashion; they did not pick up any luggage, exited the terminal, then came together, talked for the first time and got onto a taxicab line together with other passengers.

Based solely upon the above "profile" information and without any other information or evidence whatsoever of any wrongdoing by any of the defendants, AGENT WHITMORE approached the three, identified himself as a Federal Narcotics Officer and began questioning them. According to AGENT WHITMORE defendant CANDIDO RIQUELMY stated they had come from California (later he stated that he meant Chicago); when asked to produce tickets and identification defendant CANDIDO RIQUELMY produced a Pennsylvania license in his name and an airlines ticket in the name CANDIDO NATAL (his correct middle name); defendant FELIX LOPEZ produced a New York drivers license in his own name and an airlines ticket in the name of T. PUENTE; the defendant EDDIE RIQUELMY did not have his airlines ticket and produced a green union identification card in his own name and his own picture, which, according to the Agent, looked suspicious.

The Agent then testified: "Because I was alone I asked them to please accompany me inside the lobby, especially EDDIE RIQUELMY."

They went inside to the baggage claims area and the Agent then testified: "I told CANDIDO RIQUELMY to go to the



phone booths and I would question EDDIE RIQUELMY a few minutes (emphasis supplied)."

Then the Agent requested LOPEZ to likewise go to the phone booths. The Agent then asked a uniformed Port Authority Policeman to assist him and to be a witness that EDDIE RIQUELMY "had given me an identification that I was not satisfied with."

AGENT WHITMORE then went back to EDDIE RIQUELMY and asked him for some more identification. EDDIE RIQUELMY was carrying a leather jacket and began to reach into one of the pockets. AGENT WHITMORE then reached over, said he would take the identification himself, took the jacket away, felt a bulge, removed it from the jacket, and identified it as a crystalline substance resembling heroin.

AGENT WHITMORE then stated he placed all three defendants under arrest.

On cross-examination AGENT WHITMORE conceded that other passengers likewise walked through the baggage area at the same pace and without talking and further conceded that he had signed an affidavit wherein he swore that the defendants were engaged in conversation with each other when they alighted from the plane.

#### THE QUESTION PRESENTED

May Persons Leaving an Airport Be Stopped and Searched Merely Because Certain Otherwise Innocent Characteristics Appear to an Agent to Be Part of Alleged "Airport Profile?"



THE LAWPOINT ONE

A STOP OF A PERSON IS NOT REASONABLE, AND IS, THEREFORE, ILLEGAL UNDER THE FOURTH AMENDMENT, WHERE THE STOP IS BASED SIMPLY ON THE FACT THAT THE PERSON POSSESSES CERTAIN OTHERWISE INNOCENT CHARACTERISTICS, DESPITE THE FACT THAT SUCH CHARACTERISTICS MAY BE PART OF AN ALLEGED "DRUG COURIER PROFILE."

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It is elementary that searches conducted without a warrant are per se unreasonable under the Fourth Amendment, except in a "few special exceptions." Katz v. United States, 389 U.S. 347. Clearly, no exceptions to the warrant requirement were present in the instant case to justify the initial stop, the removal to the baggage area and the subsequent search of the defendant EDDIE RIQUELMY.

In Terry v. Ohio, 392 U.S. 1 (1967), the Supreme Court held that a police officer may make an initial investigatory stop of a defendant if such stop is based upon a reasonable suspicion of criminal activity. Clearly, on the facts set forth above, there was no "reasonable suspicion of criminal activity" in the conduct of the defendants prior to the initial investigatory stop at the taxicab line outside the airport terminal. The Agent admitted that other people walked at the same rate of speed as the defendants and that other people also did not talk as they walked through the baggage area to the outside of the terminal. Clearly, there was



absolutely nothing whatsoever in defendants' behaviour that was not consistent with complete innocence.

It is further clear that nothing additional was derived from the improper investigatory stop that justified the Agent subsequently making a search of the defendant EDDIE RIQUELMY. For this, probable cause of a crime must first be established. Certainly, "probable cause" was not established by the production of the defendant EDDIE RIQUELMY of a green identification card (in evidence at the Hearing) which bore his own picture and his own name. And, at no time did the officer testify that he felt himself to be in any danger which might justify a limited search for weapons. Sibron v. New York, 392 U.S. 40 (1968).

As the Court explained in Sibron v. New York, supra:

"The police officer is not entitled to seize and search every person whom he sees on the street or of whom he makes inquiries. Before he places a hand on the person of a citizen in search of anything, he must have constitutionally adequate, reasonable grounds for doing so. In the case of a self-protective search for weapons, he must be able to point to particular facts from which he reasonably inferred that the individual was armed and dangerous." At 392 U.S. 64.

The government in this case, however, attempts to justify its clear lack of reasonable suspicion for the initial stop and clear lack of probable cause for the subsequent search by relying on the so-called "airport profile" characteristics.

There are three such "airport profile" cases, all from the Eastern District of Michigan and none of these cases



even remotely justify the unlawful stop and subsequent illegal search in the instant case.

Thus, in United States v. Van Lewis the Court specifically held that the profile alone does not give rise to the level of suspicion that justifies an investigatory stop under Terry v. Ohio, supra, and obviously, therefore, does not provide probable cause for an arrest and search. Thus, the Court held:

"Although the Court believes that the agents involved in these searches are extraordinarily accomplished, use of the profile presented in these cases is itself insufficient to establish probable cause. It may be appropriate to invade the privacy of all air travelers in order to protect the freedom of travel from the threat of air piracy, but the Court should not approve a procedure that may involve widescale invasion of privacy, particularly if used by less skilled people or by those who may be less than completely honest, to enforce ordinary criminal statutes without some indicia of culpability other than the courier profile.

"Unless agents have more indicia of criminal activity than that indicated by their observation of the profile factors made public in the record, probable cause will be lacking. Additional information about a given suspect is necessary. This need not be much; perhaps not as much as might be required to sustain an arrest or search where one of the ingredients of probable cause is an informant's tip, something, in other words, which singles out a suspect from the innocent traveling population.

"In the Hughes and the White, McCaleb and Page cases, the only information suggestive of probable cause articulated by the agents was a limited number of characteristics which might easily be observed in many other innocent travelers. Short trips to major cities which also function as drug



import centers, little or no luggage, nervous gestures or conversation upon arrival, or the uses of aliases do not of themselves give rise to probable cause that a suspect is a drug courier. Given an absence of probable cause to arrest these defendants, the searches of Hughes' handbag and McCaleb's suitcase were invalid as incident to arrest." At 409 Fed. Supp. 535, 543.

The Court thereupon granted the motion to suppress of the defendant HUGHES and did not grant the motion to suppress of the defendants WHITE, McCALEB and PAGE only because they consented to the search (there is absolutely no consent in the instant case).

WHITE, McCALEB and PAGE subsequently appealed to the Sixth Circuit Court of Appeals. The Court of Appeals has just reversed the District Court and granted the motion to suppress as to all three, sub. nom United States v. McCaleb, 21 Cr1 2101 (6th Cir. 4-11-77). The Circuit Court held that the "drug courier profile," by itself, provides no Terry type suspicion justifying an initial stop and secondly, even if it did, the defendants, as in the instant case, were actually arrested long before the search, namely, when they were taken in custody by the Agent and removed to a different location. The Court of Appeals held:

"The 'drug courier profile,' by itself, provides no probable cause to arrest a person.

"While a set of facts may arise in which the existence of certain profile characteristics give law enforcement officials reasonable suspicion to believe that a person is involved in criminal



activity, see Terry v. Ohio, 392 U.S. 1 at 21, the circumstances of this case do not provide the specific and articulable facts upon which suspicion must be based. The activities of these appellants were consistent with innocent behaviour.

"Furthermore, even if we were to find that the initial stop was justified, the detention that followed went well beyond the temporary, limited detention contemplated by Terry. See U.S. v. Brignoni-Ponce, 422 U.S. 873, 17 CrL 3180 (1975), and U.S. v. Hunter, 20 CrL 2536 (CA 6 1977). McCaleb and Page were not free to leave at any point after the initial stop. When they were taken to the private office, the arrest was complete." At 21 CrL 2102.

The final defendant VAN LEWIS (whose appeal has probably not yet been taken or decided) involved a huge amount of investigation outside and in addition to the "airport profile" had been previously done by the agent in that case. The agent had visited his home prior to the stop, had checked out his telephone number, had spoken to the Detroit police, and had in fact established probable cause completely outside of the "airport profile" which justified the arrest and denial of the motion to suppress as to VAN LEWIS, a situation clearly not applicable to the instant case. Likewise, in United States v. Allen, 421 F. Supp. 1372 (E.D.Mich. 1976), the District Court found much additional incriminating evidence aside from the "airport profile," especially "her apparent connection with a documented large-scale heroin dealer," a situation clearly not present in the instant case.

The final "airport profile" case is the case of United States v. Floyd, 418 F. Supp. 724 (E.D.Mich.), 724. In



this case CHIEF JUDGE KEITH of the District Court, in a case almost identical to the instant case, considered all of the rationale of the previous "airport profile" cases and held, without qualification, that the "profile" alone does not justify a stop. The Court stated:

"Accordingly, the Court, after balancing the competing interests of drug law enforcement and the right of the individual to be left alone, holds that a stop of a person is not reasonable, and is, therefore, illegal under the Fourth Amendment, where the stop is based simply on the fact that such person possesses certain otherwise innocent characteristics, despite the fact that such characteristics may be part of an alleged 'drug courier profile.'" At 418 F. Supp. 728.

In U.S. v. Floyd it should be noted the Agent testified to even more of a "profile" than in the instant case. As in the instant case, however, there was absolutely nothing inconsistent with innocence from any of the criteria of the so-called profile. The Court then granted defendant's motion to suppress and held:

"The Court finds that the drug courier profile is itself insufficient to establish probable cause. 'Unless the agents have more indicia of criminal activity than that indicated by their observation of the profile factors made public in the record, probable cause will be lacking.' United States v. Van Lewis, supra, at 543." At 418 F. Supp. 729-730.

Clearly, therefore, the Agent in the instant case did not have a reasonable suspicion to stop the defendants and did not have probable cause to arrest the defendant EDDIE RI-QUELMY, prior to the Agent conducting a search of him.



POINT TWO

THE AGENT'S TESTIMONY WAS DIRECTLY CONTRADICTED IN AN ESSENTIAL POINT BY THE AFFIDAVIT SIGNED BY THE AGENT IN SWEARING OUT THE COMPLAINT AGAINST THE DEFENDANTS.

The Court is respectfully referred to the testimony of the Agent at the Hearing wherein the Agent testified that an essential part of his "profile" was that the three defendants alighted from the plane and did not engage in any conversation until they had left the airport terminal building. The affidavit of the same agent in swearing out the complaint states expressly that the three defendants engaged in conversation when they alighted from the plane. Clearly, even falling back on the government's "profile," which is not at all supported by any of the profile cases, there was a complete absence of anything in the conduct of these defendants which would justify the initial stop and the subsequent arrest and search of one of them, and, certainly, there can be no excuse or justification whatsoever for the arrest of the defendant FELIX LOPEZ, the only evidence against whom was that he was on the same plane, together with seventy-odd other passengers, with the defendant EDDIE RIQUELMY.

POINT THREE

ANY OBJECTION AS TO THE STANDING OF DEFENDANT FELIX LOPEZ WAS WAIVED BY THE GOVERNMENT'S FAILURE TO OBJECT AT ANY TIME BEFORE, DURING OR AFTER THE HEARING ON THE DEFENDANTS' MOTION TO SUPPRESS.



CONCLUSION

A STOP OF A PERSON IS NOT REASONABLE, AND IS, THEREFORE, ILLEGAL UNDER THE FOURTH AMENDMENT, WHERE THE STOP IS BASED SIMPLY ON THE FACT THAT THE PERSON POSSESSES CERTAIN OTHERWISE INNOCENT CHARACTERISTICS, DESPITE THE FACT THAT SUCH CHARACTERISTICS MAY BE PART OF AN ALLEGED "DRUG COURIER PROFILE."

THE AGENT'S TESTIMONY WAS DIRECTLY CONTRADICTED IN AN ESSENTIAL POINT BY THE AFFIDAVIT SIGNED BY THE AGENT IN SWEARING OUT THE COMPLAINT AGAINST THE DEFENDANTS.

Wherefore, defendant FELIX LOPEZ's motion to suppress should be granted.

Respectfully submitted,

LINKER & LINKER  
Attorneys for  
Defendant FELIX LOPEZ  
Office & P.O. Address  
225 Broadway  
New York, New York 10007  
233-5370

JULIAN G. LINKER  
(of counsel)

173

FILED  
IN CLERK'S OFFICE  
J. S. DISTRICT COURT E.D. N.Y.

★ MAY 18 1977 ★

TIME A.M. \_\_\_\_\_  
P.M. \_\_\_\_\_

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

77 CR 172

- against -

EDDIE RIQUELMY, et al.

Defendant.

----- X

GOVERNMENT'S MEMORANDUM  
IN OPPOSITION TO DEFENDANTS'  
MOTIONS TO SUPPRESS

DAVID G. TRAGER  
United States Attorney  
Eastern District of New York  
Attorney for Respondent  
225 Cadman Plaza East  
Brooklyn, New York 11201

RHONDA C. FIELDS  
Assistant U.S. Attorney  
(Of Counsel)



TRP:RCF:jb  
F.#771,337

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

- - - - - X

UNITED STATES OF AMERICA

77 CR 172

- against -

EDDIE RIQUELMY, et al.

Defendants.

- - - - - X

GOVERNMENT'S MEMORANDUM  
IN OPPOSITION TO DEFENDANTS'  
MOTIONS TO SUPPRESS

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PRELIMINARY STATEMENT

Defendants Eddie Riquelmy, Candido Riquelmy, and Felix Lopez are charged in a three count indictment with conspiracy, possession of heroin with intent to distribute, and interstate transportation to promote the distribution of heroin (Title 21, United States Code, Section 846; Title 21, United States Code, Section 841(a)(1) and Title 18, United States Code, Section 2; Title 18, United States Code, Section 1952(a)(3) and Section 2).

All three defendants have moved for suppression of all statements and evidence on the grounds they are the fruit of an unlawful search and seizure because of lack of probable cause to detain and search defendants.

This memorandum is submitted in opposition to defendants' motion to suppress.



FACTSGeneral Background

The Drug Enforcement Administration in the New York area has been involved in a major drive to intercept contraband drugs which are being brought into the New York area from South America via various major United States cities by drug couriers using domestic airlines. Previous investigation and studies done by the Drug Enforcement Administration has revealed that large amounts of brown heroin are being brought from South America to Texas or California and being shipped to various cities in the United States such as Los Angeles, San Diego, Detroit and Chicago. Drug couriers from New York, which is a recipient city for brown rock heroin, thereupon travel to these cities, purchase the drugs, and return to New York on various domestic flights. (11, 12) <sup>1/</sup>

In an effort to stem this flow of drugs, the Drug Enforcement Administration has assigned experienced agents to monitor passengers on flights to and from these cities.

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<sup>1/</sup> The numbers in parenthesis refer to the transcript of the suppression hearing.

Gerard Whitmore, Special Agent, Drug Enforcement Administration is one of the agents assigned to this program at LaGuardia Airport. Agent Whitmore has been employed in the United States Customs Service and the Drug Enforcement Administration for approximately ten years. While in the Customs Service he was assigned to the International Arrivals Building of JFK Airport. It was his duty as an investigator to pick out arriving travelers for secondary search to determine whether they were carrying narcotics into the United States. While employed with the Drug Enforcement Administration he has been assigned to a program involving the isolation and identification of domestic narcotics couriers. (38-39) He, in addition, has participated in special Drug Enforcement Administration training programs concerning the interception of narcotics couriers at domestic air terminals. (5)

#### The Initial Investigative Stop

On March 17, 1977 Agent Whitmore observed three individuals (later identified as defendants Candido Riquelmy, Felix Lopez and Eddie Riquelmy) disembark from American Airlines flight #226 from Chicago. The agent observed the defendants walking roughly one behind the



other. He noticed that they were pacing each other, i.e. when one sped-up the rest sped-up; when one slowed down, the others slowed down. (8-9) The defendants also looked about them nervously as if trying to ascertain if they were being observed. The agent explained that this erratic, furtive manner of acting was demonstrably different from the actions of passengers looking around to see some one known to them. (7-8) When passing the security guard station the defendants "hugged" the wall. (54) The defendants exited the terminal in the above described manner without talking to each other and without picking up or carrying any luggage. Once outside the terminal, the defendants began conversing and went to the taxi stand. (9)

Agent Whitmore testified that in his ten years experience, the observed actions of the defendants plus the fact that they were arriving from Chicago which is a source city for heroin raised in him a suspicion that the defendants were involved in narcotics smuggling. The agent specifically stated that through his previous investigations and apprehensions of narcotics couriers he has observed that among their characteristic modes of behavior are the furtive looks around them, manner of walking "together" without apparently acknowledging each other and failure to claim or carry luggage. (40-44)



Based on the above, Agent Whitmore approached the defendants at the taxi stand, identified himself and requested to see their ticket receipts and identification. Candido Riquelmy presented his airline ticket receipt and a Pennsylvania driver's license. The ticket receipt, which indicated that the ticket had been purchased in Chicago with cash, was in the name C. Natal; the license was in the name Riquelmy. Upon being questioned, Candido Riquelmy stated that the three men were traveling together and were coming from California. (14)

Felix Lopez presented Agent Whitmore with a ticket receipt purchased in Chicago for cash and a New York driver's license which were also in different names. At this time he offered the statement that reservations had been made in a different name by "them". (14-15)

Eddie Riquelmy handed the agent a green union card which appeared to the agent to be false. He stated that he had left his ticket on the airplane although the agent could see the ticket folder sticking out of his back pocket. At the same time that Eddie Riquelmy was pulling out the green union card a piece of paper with a map fell out of his wallet onto the ground. Riquelmy attempted to hide the paper with his foot almost stepping on Agent Whitmore's hand. (15-12)

The above occurred at the taxi stand where people were lining



up behind the defendants. All these defendants, at this time, appeared nervous and their hands were shaking. (18) In order to get additional clarification and to remove defendants from possible embarrassment in such a busy public area, Agent Whitmore asked the defendants to accompany him to a near by baggage claim area which was not so heavily trafficked. The defendants voluntarily accompanied the agent to the baggage claim area. (17-18, 65)

Further Investigation and Limited Weapons Search

When they reached the baggage claims area, Candido Riquelmy stated that he had misunderstood Agent Whitmore's question. That the men were traveling from Chicago, and not from California. Candido Riquelmy then began giving orders to the other two defendants in Spanish, which Agent Whitmore could not understand. Candido Riquelmy was asked to remain silent, and he and Felix Lopez were told to stand away from Eddie Riquelmy at a nearby bank of telephones. (20)

Agent Whitmore who was alone with the defendants asked a passing taxi dispatcher to get a policeman, and Officer William Towns came into the area. (19) Agent Whitmore asked Eddie Riquelmy to give him his ticket receipt from his back pocket. This ticket, like those of the other two defendants, was in a name different from

that on Eddie Riquelmy's identification. (103) Whitmore then asked for additional identification. Riquelmy made a quick gesture to the inside of the jacket which he had folded over his arm. Agent Whitmore stopped Riquelmy's hand from reaching into the jacket. The agent felt a hard bulge in the jacket. The agent thereupon took the jacket from Riquelmy to insure that there was no weapon concealed in it. (24-25) He reached into the coat and retrieved a package wrapped in beige masking tape and measuring approximately 2 1/2"X 6" (exh. C). The agent, being familiar with the narcotics trade suspected that the package contained narcotics. He put a small puncture hole in the package and found that it indeed contained brown rock heroin. (103-104)

At this time all three defendants were placed under arrest and searched. A package containing lactose was found on top of a telephone beside which Felix Lopez was standing.

The defendants were taken to the Drug Enforcement Administration office at John F. Kennedy Airport for processing and photographing. After being advised of their rights the defendants made various statements.



## II

ARGUMENT

The defendants assert that all evidence seized from them and all statements made should be suppressed as the fruit of an unlawful search and seizure because Agent Whitmore did not have probable cause to detain defendants.

The Government asserts that the agent's initial questioning of the defendants was a properly limited inquiry based on reasonable suspicion that they were narcotics couriers; that the further questioning of defendants was justified in view of the unsatisfactory nature of their responses; and that the seizure of heroin from Eddie Riquelmy was pursuant to a proper protective pat down and search of his jacket.

A. The Initial Investigative Stop

It is well settled that law enforcement officers "may in appropriate circumstances and in an appropriate manner approach a person for purposes of

investigating possible criminal behavior even though there is no probable cause to make an arrest". Terry v. Ohio, 392 U.S. 1, 22 (1968). The Court in Adams v. Williams, 407 U.S. 143, (1972) 145-146 affirmed Terry, stating:

"The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, Terry recognizes that it may be the essence of good police work to adopt an intermediate response.... A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time."

In one of its most recent decisions dealing with the question of investigative stops, United States v. Brignoni - Ponce, 422 U.S. 873 (1975) the Court affirmed the principle of Terry and Adams v. Williams that "in appropriate circumstances the Fourth Amendment allows a properly limited "search" or "seizure" on facts that do not constitute probable cause to arrest or to search for contraband or evidence of crime". The Court noted that "the



stop and inquiry must be reasonably related in scope to the justification for their initiation". Brignoni - Ponce at 881-882.

The first questions then become 1) whether the initial stop of defendants at the taxi stand for identification was reasonable in the light of facts known to Officer Whitmore and 2) whether this limited inquiry was reasonably related in scope to the circumstances which justified the intrusion in the first place.

A(1). The Initial Stop of Defendants was Justified.

The test for determining whether the officer's action was justified at its inception is two pronged. First, the governmental interest must be balanced against the interest of the citizen "for there is no ready test for determining reasonableness other than by balancing the need to search [or seize] against the invasion which the search [or seizure] entails". Terry 392 U.S. at 21. Second, it must be determined whether the law enforcement officer can point to "specific and articulable facts which, taken together with rational inferences from these facts, reasonably warrant that intrusion". *Id.* In more general

terms the test is "would the facts available to the officer at the moment of the seizure [of the individual] or search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?" *Id.* at 21-22.

In Terry it was found that the officer was discharging a legitimate governmental interest in crime prevention and detection when he approached the defendants.

Further, the court found that the total circumstances of a series of actions "each of them perhaps innocent in itself" raised in the officer a reasonable suspicion that the defendants might be contemplating a "stick-up". *Id.* at 22-23, 27-28. Based on the above, the court found that it was both reasonable and a proper exercise of the police investigative function to approach the defendants and ask them to identify themselves.

In United States v. Brignoni - Ponce, *supra* the Court applied the same two factors in determining the reasonableness of an investigative stop of a vehicle to determine the presence of illegal aliens. In weighing the governmental interest involved in the problem of illegal aliens, the Court held that "because of the importance of



the governmental interest at stake, [and] the minimal intrusion of a brief stop, . . . we hold that when an officer's observations lead him reasonably to suspect that a vehicle may contain aliens who are illegally in the country, he may stop the car briefly and investigate the circumstances that provoke suspicion". Brignoni - Ponce, 422 U.S. at 881.

The Court, found, however, that the specific facts of the stop in Brignoni - Ponce did not meet the requirement that the stop be based on "reasonable suspicion" that a crime was being committed - i.e. that the persons might be illegal aliens. The stop was a random stop based on a fleeting glimpse of persons who appeared to be of Mexican ancestry. The Court stated, however, that such a stop would be founded on reasonable suspicion should any number of factors be present. The court noted that among the specific articulable factors which might be taken into account are: Characteristics of the area where the vehicle is encountered; proximity to the border; previous experience of the officers with alien traffic; erratic behavior of the driver; certain aspects of the vehicle itself.

The Second Circuit also recognizes the constitutionality of brief investigative stops based on reasonable suspicion. In United States v. Magda, 547 F.2d 759 (2d Cir. 1976) an experienced law enforcement officer observed the defendant and another individual make a hand to hand exchange of an unidentified object. The officer stopped the defendant, Magda, and asked him what had just taken place. Magda stated that he had just purchased a marijuana cigarette and was arrested. The court upheld the stop and search following arrest finding that the observed actions, and the officer's knowledge that the area was a "narcotics prone location", considered as a whole were sufficient to raise a reasonable suspicion in a police officer of Alesi's experience.

The government submits that the search of defendants meets both prongs of the test for initial stops. First, the governmental interest in stemming the domestic flow of illegal narcotics is equal to the government interests



of Terry<sup>2/</sup> and Brignoni - Ponce.<sup>3/</sup> The limited intrusion of an investigative stop is, therefore, equally reasonable in this context.

Second, the government submits that Agent Whitmore had specific and articulable facts which taken together warranted a reasonable suspicion, in an agent of Whitmore's extensive training and experience, that the defendants were involved in narcotics smuggling. The factors enunciated by Agent Whitmore are objective evidence of possible involvement in criminal behavior sufficient to meet the "reasonable suspicion" test for investigative stops enunciated in Brignoni - Ponce, supra.

The United States District Court for the District of Michigan and the Sixth Circuit Court of Appeals have recently dealt with a number of cases similar to the instant case. See, United States v. Van Lewis et. al., 409 F.Supp. 535 (E.D. Mich. 1976), rev. sub. nom. United States v. McCaleb, 21 CrL 2101 (6th Cir. 4-11-77) app. for re-hearing filed United States v. Allen, 421 F. Supp.

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<sup>2/</sup> Governmental interest in crime prevention and detection.

<sup>3/</sup> Governmental interest in stopping the flow of illegal aliens into the country.

1372 (E.D. Mich. 1976); United States v. Mendhall, Cr. No. 6-80208 (D.C. Mich. Nov. 18, 1976); United States v. Floyd, 418 F. Supp 724 (E.D. Mich. 1976).

In Van Lewis, 409 F. Supp. 535, the Court considered five defendants who were involved in three separate incidents.<sup>4/</sup> One set of defendants, McCaleb, White and Page, were stopped by Drug Enforcement Administration agents after disembarking from a plane arriving from Los Angeles. The agents had observed one of the men and Page board a plane for Los Angeles the previous evening wearing the same clothes. McCaleb claimed one bag at the baggage claim area. Page and McCaleb were nervous and perspiring. White appeared cool. The defendants were stopped in the parking lot and asked for identification. Their return tickets were in different names. The agents asked them to return to their office where McCaleb gave the agents permission to search the suitcase which contained heroin. The District Court found that there was insufficient probable cause to

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<sup>4/</sup> United States v. Hughes, 409 F.Supp 535 (E.D. Mich. 1976) cited in defendant Riquelmy's brief, was one of the three incidents considered in the Van Lewis opinion. The Court suppressed the evidence in Hughes finding there was not probable cause to arrest. Hughes does not involve an investigative stop.



arrest the defendants but upheld the search and seizure on the grounds that there was a valid investigative stop and consent search.

This case sub. nom United States v. McCaleb, 21 Cr1 2101 (6th Cir. 4-11-77) was reversed by the 6th Circuit Court of Appeals, finding that there was no probable cause to arrest, an invalid Terry stop, and lack of valid consent to search. The conclusion that there was an invalid Terry stop was based on a finding that "the activities of these appellants were consistent with innocent behavior".

The Government respectfully submits that the Appellate Court's reasonable suspicion test is incorrect. There is no requirement that the government must exclude the possibility that the activity of the suspects is consistent with innocent behavior. The various factors which form the basis of reasonable suspicion do not in and of themselves have to be criminal; nor do they necessarily have to be the types of behavior which would be suspicious to the untrained layman. The circumstances of each encounter should, however, be weighed from the view point of the law enforcement

officer who through training and experience has obtained a certain amount of expertise which the layman does not have.

The dissenting opinion in United States v. Magda, 547 F.2d at 759 (Motley D.J.) for example, clearly showed that many of the factors which formed the basis for reasonable suspicion in that case, when considered individually, could be viewed as entirely innocuous and innocent conduct. Thus, it was pointed out that:

1. The exchange of an unknown item between Magda and his companion could just as easily have been an exchange of addresses between friends or the passing of a quarter to a stranger as it could have been the hand-off of narcotics.

2. The fact that the area was considered a high crime area can be viewed as being virtually meaningless in a city such as New York where thousands of people are forced to be there in the pursuit of innocent daily activities.

3. The fact that Magda's companion departed rapidly was minimized by Madga's concurrent behavior of walking towards the officer.

The decision of Madga, however, was based on the sound principle that the circumstances before the



officer are not to be dissected and viewed singly; rather they must be considered as a whole. In addition, the court stressed that the circumstances before the officer "are to be viewed through the eyes of a reasonable and cautious police officer on the scene, guided by his experience and training. Id. 547 1.2d at 758-759. [emphasis added].

In United States v. Santana, 485 F.2d 365 (2d Cir. 1973) police officers were surveilling a restaurant "known to the police to be a meeting place for persons engaged in narcotics activities". The agents observed Santana, recognized by one of the agents as "a major narcotics violator", come out of the restaurant with a brown paper bag and enter his car, he drove to a near-by apartment building double parked, entered the building, and emerged approximately ten minutes later with a second brown paper bag. As Santana was preparing to drive away the officers walked up to his car and asked for identification. The Court held that the "stop" and request for identification were justified under Terry. One of the main factors relied on by the Court was that a "prominent figure" in the



narcotics trade was observed carrying "the brown paper bag which has long been a sort of hallmark of the narcotics business". A subsequent search of the brown paper bags revealed that they actually contained paella and a can of frozen orange juice - not narcotics.

Thus, the isolated and in itself innocent factor of carrying brown paper bags, can form the basis for an investigative stop when coupled with the experience of officers knowledgeable of the various modus operandi of the narcotics trade.

In numerous other cases the activities relied upon as the basis for reasonable suspicion could easily be viewed by a layman as innocuous or unsuspicious behavior.<sup>5/</sup> A law enforcement officer, however, would be derelict in his duties if he did not apply to the circumstances around him the additional knowledge and expertise given him by his special training and experience. Likewise, the courts must evaluate "reasonable suspicion" in the light of the knowledge and experience of the officer on the scene.

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<sup>5/</sup> See, e.g. United States v. Garza, 544 F.2d 222, (5th Cir. 1976) [Roving patrol officers 60 miles from Mexican border view through binoculars two cars travelling together turn off onto another road, one turning from the incorrect lane, one car appeared to be heavily loaded "indicating illegal activity afoot];

Footnote continued next page.



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5/ Footnote continued

United States v. Bugarin - Casas, 484 F.2d 853 (9th Cir. 1973) [upholding stop of man driving alone in a station wagon which was "riding low". The opinion of Brignoni - Ponce, 422 U.S. at 885, held that such factors are sufficient to form reasonable suspicion", Justice Douglas in his dissent, id. at 889-890, however, pointed out that such factors are not in and of themselves suspicious, stating: "The vacationer whose car is weighed down with luggage will find no comfort in these decisions; nor will the many law-abiding citizens who drive older vehicles that ride low because their suspension systems are old or in disrepair."]; Cf. United States v. Branch, 545 F.2d 177 (D.C.D.C. 1976) [in discussion of probable cause to arrest the court stated there was no reasonable cause for a prudent man to conclude the defendant was a narcotics carrier but noted at p. 186, n 24 that the same facts would have been enough for "an investigative stop".]; Qualls v. Parrish, 534 F.2d 690 (6th Cir. 1975) [This was an appeal from a judgment finding that law enforcement officers had not violated the civil rights of plaintiff's decedent who was shot after a high speed automobile chase. The officers were notified that a woman had been kidnapped by an individual who worked at a Chrysler - Dodge dealership. Assuming the kidnapper would be driving a Chrysler or Dodge the officers saw a Dodge with two occupants and "speculated" it might be the kidnapper's car. There were no traffic violations and nothing suspicious about the manner of driving. The civilian dressed officers tried to flag the car over; the occupants did not stop; a chase and finally the death of one occupant occurred. The occupants were not the kidnapper and his victim, but were two friends who were not involved in any criminal activity. Among its findings for the police defendants the Court held that the decision to follow the Dodge "resulted from a reasonable speculation that the kidnapper, who worked for a Chrysler - Dodge automobile dealer, might be driving a Dodge. This plus the facts that the car was in the general vicinity of the abduction, there were two occupants, and the sudden acceleration of the car "viewed in the light of the officer's experience, could reasonably lead them to conclude

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5/ Footnote continued

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that criminal activity might be afoot"...citing Terry. This tragic episode indicates that even factors which are generally considered suspicious - i.e. flight - can be as consistent with innocent behavior as with criminal behavior.] See, also, Orricer v. Erickson, 471 F.2d 1204 (8th Cir. 1973) [investigative stop of car solely on basis that it had out-of-county plates upheld, although approximately 1/2 of population of town were University students with out-of-county plates]; United States v. Solomon, 528 F.2d 88, 91 9th Cir. 1975), [investigative stop based on fact that operator of car did not know how to unlatch hood of car and was unaware of car's coolant recovery system; held stop was based on 'rational' and 'founded' suspicion that car might be stolen].



The Government submits, therefore, that the reasoning of the District Court in Van Lewis, Allen, and Mendhall, supra is correct in finding that factors such as those present in the Riquelmy case, when combined with the experience of the agent, amount to reasonable suspicion for an investigative stop.

In Van Lewis, 409 F. Supp at 543-544 the court cited factors such as little or no luggage, nervous gestures, no conversation upon arrival, as sufficient to give rise to a "founded suspicion" permitting an investigative stop.

In Allen, 421 F.Supp. at 1374, the defendant conceded that her nervous appearance, constant glancing around while deplaning, making of a local call, and anxious behavior while waiting for her baggage amounted to reasonable suspicion for an investigative stop. The Court agreed citing Terry and Adams.

In Mendenhall, supra at 5-7 the court upheld an investigative stop based on the factors of the defendant's arrival from a source city, nervous looking

about upon deplaning, and fact that she claimed no luggage. The Court further held that additional information acquired during the investigation stop supplied probable cause to arrest. Id. at 8.

In the instant case Agent Whitmore was able to point to several factors which in his experience lead him to believe the defendant's were involved in criminal activity. These factors include the following:

1. The defendants disembarked from a flight from Chicago, which is a source city for heroin couriers into the New York area (6, 11-13) <sup>6/</sup>

2. The defendants walked through the terminal in a loose single file group walking at the same pace without talking to each other. (41-42). <sup>7/</sup>

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<sup>6/</sup> See United States v. Magda, 547 F.2d at 758 [Reputation of an area for criminal activity is an articulable factor]; United States v. Brignoni - Ponce, 422 U.S. at 884 [characteristics of area may be taken into consideration].

<sup>7/</sup> Agent Whitmore testified that he has observed such behavior before in individuals alighting from an aircraft, who don't want to be placed with each other, so that even if one is identified, the rest might be able to "exit"; "they won't refer to each other until they feel it's safe" (43).



3. The defendants looked about them in a nervous manner as if trying to see if they were being followed or observed which action was demonstrably different from the actions of passengers looking for friends. (40-41)<sup>8/</sup>

4. The defendants walked close to the wall away from the security police.

5. The defendants carried no luggage.

6. Once outside the terminal the defendants proceeded to the taxi stand and began conversing.<sup>9/</sup>

In addition to the above factors, Agent Whitmore testified that for approximately the last ten years he has been involved in investigations of international and domestic narcotics couriers for the United States Customs Service and the Drug Enforcement Administration. (4-5) While in the Customs Service he was assigned to pick out people who were likely candidates for secondary search and determine

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<sup>8/</sup> See, United States v. Brignoni - Ponce, 422 U.S. at 884 [behavior of person may be taken into consideration] see also fn 7 supra.

<sup>9/</sup> See fn 7 supra.

whether in fact they were carrying narcotics into the United States. While with the Drug Enforcement Administration Agent Whitmore has been assigned to a program of identifying couriers at domestic airports, and he has additionally observed narcotics couriers as a part of this program.

(38-40) He has also attended training sessions concerning the apprehension of domestic narcotics couriers in airport situations. (5) Due to this experience, he has previously observed the above described actions of defendants in others and knows them, in various combinations and circumstances, to be characteristics of narcotics couriers.

Thus, the initial stop was proper as Agent Whitmore had a reasonable suspicion, based on specific and articulable facts, that defendants were involved in criminal activity.

A(2). The Scope of the Initial Stop was Reasonable

The final factor of the examination of the validity of the initial investigative stop is a determination of whether the limited inquiry was reasonably related in scope to the circumstances which justified the intrusion in the first place.



This Circuit has discussed the test for reasonableness as being a balancing of the need for the stop against the gravity of the intrusion which the stop entailed. United States v. Magda, 547 F.2d 758. Both Adams v. Williams, 407 U.S. at 146. Terry v. Ohio, 392 U.S. at 2122 recognized that "a brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known the officer at the time.

In Brignoni - Ponce, 422 U.S. at 881-882 the Court stated that an officer with reasonable suspicion that individuals were illegally in the country may question the driver and passengers about their citizenship and immigration status, and he may ask them to explain suspicious circumstances.

The Government submits that Agent Whitmore's action, in asking the defendants to show him identification and airline tickets, and in asking where the defendants were traveling from, was a most minimal intrusion. The agent was alone; the defendants were not physically restrained or threatened.

This circuit has recognized that a demand for identification is proper and noted that "once a lawful stop for investigative purposes is under way, it is mere routine for an officer to ask for identification". United States v. Salter, 521 F.2d 1326, 1329 (2d Cir. 1975).

B. The Pursuit of Further Investigation was Proper

The request that the defendants move to a less congested area and the pursuit of the investigation were proper. United States v. Salter, supra at 1328, indicated that there was nothing improper with asking the defendant to step into a baggage area. In the present case, the initial stop occurred at a public taxi stand in LaGuardia airport. People lining up behind the defendants were being delayed. The officer required additional explanation and, further, did not wish the defendants to suffer embarrassment in such a busy public area. The request, therefore, that the defendants move to a less trafficked area was not improper.



Further, it was not improper to pursue the investigation of defendants at this time. United States v. Richards, 500 F.2d 1025 (9th Cir. 1974) states that a defendant's "implausible and evasive responses" to questions would create reasons for continuing the investigation further. Indeed, Brignoni - Ponce, supra implicitly authorizes just such further inquiry since it states that an officer may "ask them [the detainees] to explain suspicious circumstances". Id. 422 U.S. at 881-882.

In the instant case, the defendant's responses to Agent Whitmore's initial inquiries gave him ample reason to pursue the investigation. Two of the defendants gave the agent ticket receipts and identification in different names. The only explanation offered was the statement by Lopez that the reservations had been made by "them". The third defendant, Eddie Riquelmy gave the agent an identification card which appeared suspect; in addition, Riquelmy stated that he had left his ticket on the plane while the agent could see it sticking out of his pocket. When Eddie Riquelmy dropped a piece of paper with a map on it, he

almost stepped on Whitmore's hand in an attempt to conceal it. In addition to this, however, the defendant Candido Riquelmy told the agent that they were traveling from California. The tickets, however, were purchased in Chicago and indicated that the defendants were traveling from Chicago. Two individuals traveling under assumed names, plus one who is apparently attempting to conceal his ticket, alone would be enough to indicate that further inquiry was necessary. The combination of all the above facts, therefore, certainly warranted further inquiry.

C. There was a Proper Protective Search of Eddie Riquelmy for Weapons.

Once in the baggage terminal Eddie Riquelmy, upon request, gave the agent his airline ticket. This ticket, also, proved to be in a name different from that on his identification card. In an attempt to obtain correct identification, the agent asked Riquelmy for further identification. See, United States v. Salter, 521 F.2d at 1329.



At this time Riquelmy made a movement to the inside of his jacket. Agent Whitmore stopped him from reaching into the jacket and felt a hard object in the jacket. He thereupon removed the jacket to insure the object was not a weapon.

This final action, the government submits was a proper protective search under Terry v. Ohio. Supra. The search was limited to the jacket into which Eddie Riquelmy was reaching and was not unreasonable in light of the circumstances.

D. Credibility of Whitmore's Testimony

Defendants finally assert that the testimony of Agent Whitmore is not credible. This assertion is based on defendants' exhibit C, which is an affidavit for the complaint issued for the defendants following their arrest, and on asserted variances between the testimony of Officer Towns and Agent Whitmore.

Review of the complaint affidavit reveals that it is not inconsistent with Agent Whitmore's testimony. Agent Whitmore testified that when the defendants were walking through the terminal they did not talk to each other. He further testified that when they exited the terminal and proceeded to the taxi stand they began conversing (9).

Paragraph 1(a), which is one of two handwritten paragraphs added to the complaint affidavit to supplement the probable cause states: "When disembarking from the aforementioned flight, the three defendants were engaged in conversation, walking together to the taxi stand...."

While the sentence could have been more artfully drawn by the insertion of "after" for "when", it never the less imports the meaning that the defendants were engaged in conversation while walking together to the taxi stand.

While this sentence of the affidavit may at most be ambiguous, it is not contradictory of Agent Whitmore's testimony at the suppression hearing.

The Government, also, asserts that there was no material variance between the testimony of Agent Whitmore and Police Officer Towns, concerning the circumstances of the protective search of Eddie Riquelmy's jacket.

Officer Whitmore testified, in summary, that Eddie Riquelmy had his jacket over his arm and clutched to his body. He demonstrated that the jacket was folded once before laying over Riquelmy's arm. He further testified that he asked Riquelmy for further identification. Riquelmy



made a sudden move to the jacket. Whitmore stopped his hand and told Riquelmy to stop (37). He felt a hard bulge; and told Riquelmy that he would take out the identification and asked him to hand over the jacket. (24) The agent then reached in the jacket and noticed there was a cut in it, and pulled out the hard object (37).

Police Officer Towns testified that the jacket was draped over Riquelmy's arm. He heard Whitmore ask for further identification. He saw Riquelmy "reaching in there". (109) Whitmore "in one motion" took the jacket from him (112) saying "Hold it. Let me get that for you" (109) He then saw Whitmore pat the jacket, feel the lump, and take the package out (113). This testimony is not significantly different from Whitmore's. The only major element missing from Towns' testimony was what Whitmore felt when he first touched the jacket. This, of course, Towns would not know.

The Government, therefore, submits that the testimony of Agent Whitmore was not impeached. Any difference between his testimony and that of Officer Towns



is obviously merely another example of differences of memory and articulation which are observed in witnesses to similar incidents every day on the witness stand. The testimony of Agent Whitmore was entirely honest and credible.

E. The Defendants Candido Riquelmy and Felix Lopez Lack Standing to Object to the Admission of Evidence Seized From, and Statements Made by, Eddie Riquelmy.

The defendants Candido Riquelmy and Felix Lopez are charged with conspiracy to distribute heroin (21 U.S.C., §846) and with aiding, abetting and causing the possession of heroin with intent to distribute and interstate travel to promote the distribution of heroin (21 U.S.C., §841(a)(1) and 18 U.S.C., §2; 18 U.S.C., §1952(a)(3) and §2).

In order to be able to contest a search and seizure a defendant must be able to show that he has standing. The law presently recognizes two ways in which standing can be claimed. First, there is actual standing which is a recognition of the basic fact that the Fourth



Amendment protects "people, not places". Katz v. United States, 389 U.S. 347, 351 (1967). The ability of a defendant to claim the protection of the Amendment depends on whether that defendant - and that defendant alone, Alderman v. United States, 394 U.S. 165, 171-172 (1969) - can show that his personal right to a reasonable expectation of privacy has been invaded. He must have been "a victim of a search or seizure, one against who the search was directed, as distinguished from one who claims prejudice only through the use of evidence gathered as a consequence of a search or seizure directed at someone else". Jones v. United States, 362 U.S. 257, 261 (1960).

Second, there is the automatic standing rule of Jones v. United States, 362 U.S. 257, 263-264 (1960) and Brown v. United States, 411 U.S. 223, 227 (1973). This rule affords standing, even though the defendant's Fourth Amendment rights were not violated, where the defendant is charged with a possessory offense, and possession, at the time of the search and seizure, is an essential element of the crime charged.



The Government submits the two defendants do not have actual standing to object to the seizure of heroin from Eddie Riquelmy during a protective Terry search because they were not in possession of the evidence.<sup>10/</sup>

Neither do Candido Riquelmy and Felix Lopez have automatic standing to object to the seizure because possession, at the time of the contested search and seizure, is not an essential element of the charges against them.

In Jones v. United States, 362 U.S. 257, 263 (1960), the Supreme Court held that where a defendant's "conviction flows from his possession of the narcotics at the time of the search" he has "automatic" standing to object to the search. Brown v. United States, 411 U.S. 223, 227 (1973) limits the Jones Rule to cases in which "possession at the time of the contested search and seizure is 'an essential element of the crime charged'".

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<sup>10/</sup> It is the position of the government that the stop, investigation, and search were legal in all respects. It is additionally asserted that Candido Riquelmy and Lopez have no standing as to evidence seized from Eddie Riquelmy.



This circuit has held that possession is not an essential element of the crime of conspiracy, and that the automatic standing Rule of Jones, therefore, does not apply to such a charge. See, United States v. Sacco, 436 F.2d 780, 784 (2d Cir.), cert. denied, 404 U.S. 834 (1971); United States v. Galante, Slip op. 959, 965-966 (2d Cir. December 14, 1976); approved in United States v. Banerman, Slip op. 2513, 2517 (2d Cir. March 22, 1977).

Therefore, Candido Riquelmy and Felix Lopez have neither actual nor automatic standing under Count One of the indictment which charges conspiracy (21 U.S.C., §846).

Likewise Candido Riquelmy and Felix Lopez lack standing under Counts Two and Three of the Indictment which charge them with aiding and abetting and causing an act to be done under Title 18, United States Code, Section 2.

Possession of the heroin at the time of the seizure is not an essential element of the charge of violation of Title 18, U.S.C., §2. All that must be proved is that 1) Eddie Riquelmy committed the substantive violation charged and 2) that defendants Candido Riquelmy

and Felix Lopez associated in the venture or in some manner participated in it as something they wished to bring about. Thus, aiding and abetting can be shown by proof that the defendants aided Eddie Riquelmy by giving him protection, by directing his acts, by giving him money for the venture etc. The fact that the two defendants were with Eddie Riquelmy does not change the fact that proof of their possession of the heroin is not an element of the offense. They could have been properly charged with violations of 18, U.S.C., §2 even if they had been miles away from Eddie Riquelmy at the time of the search. See United States v. Felix, 474 F.2d 610, 611-611 (9th Cir. 1973).

It should be noted that both Fourth and Fifth Amendment rights are personal rights. Only a person whose reasonable expectation of privacy has been invaded has standing to move to suppress seized evidence. Jones v.



United States, 362 U.S. at 261; accord, Alderman v.

United States, 394 U.S. 165 (1969).

This is not a case where the two defendants were owners of or present in searched premises where there was a reasonable expectation of privacy. See, Mancusi v. DeForte, 392 U.S. 364 (1968); Combs v. United States, 408 U.S. 224 (1972). The search occurred in a public airlines terminal. Moreover, a search of premises was not involved; an individual, Eddie Riquelmy was searched. These two defendants cannot claim standing as a result of an asserted invasion of someone else's Fourth or Fifth Amendment rights.

F. The Lactose was Properly Seized as Abandoned Property.

Following the arrest of Felix Lopez, a package containing lactose was found on top of the telephone he was standing beside. The government submits that this was abandoned property not subject to suppression. See, Abel v. United States, 362 U.S. 217 (1960); United States v. DeLarosa, 450 F.2d 1057 (3rd Cir., 1971); United States v. Dzialak, 441 F.2d 212 (2nd Cir. 1971).

CONCLUSION

The investigative stop of defendants and protective search of Eddie Riquelmy were legal. The defendants' motions to suppress should be denied in all respects.

Respectfully submitted,

DAVID G. TRAGER  
United States Attorney  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

RHONDA C. FIELDS,  
Assistant U.S. Attorney  
(Of Counsel)



RCF:rcw

## AFFIDAVIT OF PERSONAL SERVICES

771,337

STATE OF NEW YORK  
COUNTY OF KINGS  
EASTERN DISTRICT OF NEW YORK, ss:

MICHAEL A. DEAS, being duly sworn, says that he is employed in the office of the United States Attorney for the Eastern District of New York. That on the 18th day of May, 1977, he served a true copy of the annexed Govt's Memo in Opposition to Defendants' Motion to Suppress on the office of Stephen R. Laifer, Esq. attorney for Candido Riguelmy herein, located at 166 Montague Street, Borough of Brooklyn, City of New York and on the office of David S. Jacobs, Esq. attorney for Eddie Riguelmy, herein located at 166 Montague Street, Borough of Brooklyn, City of New York, by leaving a true copy of same with his clerk or other person in charge of said office.

Michael A. Deas

Sworn to before me this  
18th day of May, 1977

Frank Arcodia

FRANK ARCODIA  
Notary Public, State of New York  
No. 24-0089585  
Qualified in Kings County  
Commission Expires March 30, 1979

and on the office of Julian S. Linker, Esq., attorney for Felix Lopez, located at 225 Broadway, Borough of Manhattan, City of New York.

SIR:

PLEASE TAKE NOTICE that the within will be presented for settlement and signature to the Clerk of the United States District Court in his office at the U. S. Courthouse, 225 Cadman Plaza East, Brooklyn, New York, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, at 10:30 o'clock in the forenoon.

Dated: Brooklyn, New York,

\_\_\_\_\_, 19\_\_\_\_

United States Attorney,  
Attorney for \_\_\_\_\_

To:

Attorney for \_\_\_\_\_

SIR:

PLEASE TAKE NOTICE that the within is a true copy of \_\_\_\_\_ duly entered herein on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in the office of the Clerk of U. S. District Court for the Eastern District of New York,  
Dated: Brooklyn, New York,

\_\_\_\_\_, 19\_\_\_\_

United States Attorney,  
Attorney for \_\_\_\_\_

To:

Attorney for \_\_\_\_\_

CRIMINAL Action

No. 77 CR 172

UNITED STATES DISTRICT COURT  
Eastern District of New York

UNITED STATES OF AMERICA

—Against—

EDDIE NATAL RIQUELMY,  
CANDIDO NATAL RIQUELMY and  
FELIX LOPEZ,

Defendants.

NOTICE OF APPEAL AND  
CERTIFICATION

DAVID G. TRAGER

United States Attorney,  
Attorney for U.S.A.  
Office and P. O. Address,  
U. S. Courthouse  
225 Cadman Plaza East  
Brooklyn, New York 11201

Due service of a copy of the within  
is hereby admitted.

Dated: \_\_\_\_\_, 19\_\_\_\_

Attorney for \_\_\_\_\_

FD-10 (Rev. 5-22-64)

Alvin A. Schall  
330-7060



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FILED  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

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TIME A.M. \_\_\_\_\_  
P.M. \_\_\_\_\_

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
UNITED STATES OF AMERICA

77-CR-172

v.

EDDIE NATAL RIQUELMY  
CANDIDO NATAL RIQUELMY  
FELIX LOPEZ

RECEIVED  
MEMORANDUM and  
ORDER

AUG 3 1977

-----X  
COSTANTINO, D.J.

Defendants move to suppress a quantity of heroin and a bag of lactose seized at the time of their arrest. All defendants have standing. See United States v. Westerlenn-Martinez, \_\_\_\_ F. Supp. \_\_\_\_, # 77-CR-286 (E.D.N.Y. July 19, 1977).

It is not necessary to reach the propriety of the investigative stop or the validity of the agent's "protective search" of Riquelmy's jacket. Assuming arguendo that the agent's actions were justified up to the point of the seizure of the package from Riquelmy's jacket, the agent nevertheless acted unconstitutionally in puncturing the package. See United States v. Chadwick, \_\_\_\_ U.S. \_\_\_\_, 45 U.S.L.W. 4797 (June 21, 1977). Once the agent had removed

(10)

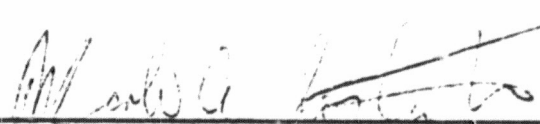
the package from the jacket, he no longer believed that it contained a weapon; rather he correctly believed that it contained heroin. At that point he should have requested Riquelmy's consent to search (puncture) the package, or else he should have detained the defendants while he sought<sup>1</sup> a search warrant./

In Ex Parte Jackson, 96 U.S. 727 (1878) the Supreme Court indicated that sealed packages were entitled to the protections afforded by the Fourth Amendment. As in Chadwick, supra, the defendants in this case, by placing their personal effects inside a sealed package, "manifested an expectation that the contents would remain free from public examination. No less than one who locks the doors of his home against intruders, one who safeguards his personal possessions in this manner is due the protection of the Fourth Amendment Warrant Clause." United States v. Chadwick, supra, at 4800.

1/ If the search and seizure were to be justified at all it would have to be on the grounds that there was probable cause to arrest defendants at the time the agent punctured the package, and that in so puncturing it, the agent was conducting a search incident to an arrest. In that case, the agent could have properly detained the defendants until he obtained a warrant.



Despite the suggestions to the contrary in Mr. Justice Blackmun's dissenting opinion, United States v. Chadwick, <sup>2</sup>supra, at 4803 (Blackmun, J., dissenting), contra United States v. Chadwick, supra (Brennan, J., concurring), this court concludes that the rationale of the majority opinion in Chadwick requires suppression under the circumstances of this case. The package was reduced to the exclusive control of the agent and there was no danger that the arrestee might gain access to the property to seize a weapon or destroy evidence. See United States v. Chadwick, supra at 4801. Furthermore, the question of probable cause was a close one. Under these circumstances, either consent or the "detached scrutiny of a neutral magistrate" was constitutionally necessary prior to puncturing the package. Defendants' motion to suppress the heroin is accordingly <sup>3</sup>granted./

  
U. S. D. J.

2/ See also United States v. Kaye, 492 F.2d 744 (6th Cir. 1974).

3/ In light of this opinion it would appear that a decision as to suppression of the lactose is not necessary. If either of the parties feels that such a determination is necessary, they are directed to contact this court within 10 days of this decision.

*Schall*

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

4 219

-----X  
UNITED STATES OF AMERICA

77-CR-286

v.

JUL 19 1977

CARLOS WESTERBANN-MARTINEZ and  
LUIS ANGEL TORRES,

Defendants.

-----X  
A p p e a r a n c e s :

Hon. David G. Trager, U.S. Attorney, E.D.N.Y., by  
Richard Berne, Ass't U.S. Attorney

James V. McGovern, Esq., 233 Broadway, New York,  
New York 10007, for defendant Westerbann-Martinez

Marion Seltzer, Esq., Federal Defender Unit, The Legal  
Aid Society, 26 Court Street, Brooklyn, New York 11242,  
for defendant Torres

COSTANTINO, D.J.



It was a maxim with  
Foxey . . . "Always suspect  
everybody."

A 220

Dickens, The Old Curiosity  
Shop. (1841)

The motions to suppress in this case provide an opportunity to re-emphasize that something more than reliance on "Foxey's maxim" is necessary to sustain the propriety of an investigative stop.

American Airlines Flight 492 originates in Chicago and terminates in New York LaGuardia Airport after a stop in Cincinnati. When they deplaned from Flight 492 at LaGuardia, on March 29, 1977, Carlos Westerbann-Martinez (hereinafter Westerbann) and Luis Angel Torres, two casually dressed Hispanics, glanced about the airport. It was the way in which they were looking around that first attracted the attention of Agent Arthur Rose and led him to conclude that they were nervous. Agent Rose had been assigned to LaGuardia Airport as part of a Drug Enforcement Administration narcotics detection program. Rose and his partner were there to observe passengers in order to "look for any suspicious traits . . . which we believe are traits that are exhibited by narcotics couriers."

(Tr. 1.7). Among the factors that Rose was looking for are those contained in a Drug Courier Profile compiled by the Drug Enforcement Administration.<sup>1</sup> According to Agent Rose, these factors include (1) people travelling from a source city,<sup>2</sup> (2) people who are Hispanics (especially Mexicans), (3) people travelling long distances with little luggage, (4) people who are together but appear not to be together, and (5) people who are nervous (and look around the airport in a suspicious manner). (Tr. 2.5, 2.58).

Having first noticed Torres and Westerbann as a result of their nervous "scanning" of the arrival area, Rose then decided that their Hispanic appearance and casual dress made them worth watching. Although Rose felt that they might be together, they did not converse. Nor did Torres, who had exited the plane after Westerbann, ever draw abreast of Westerbann during the 3-4 minute walk to the outside of the terminal. According to Rose, both defendants "repeatedly looked behind them during this walk." (Tr. 1.9). After the defendants reached the

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<sup>1</sup>/  
See this opinion, infra, at 19-22.

<sup>2</sup>/  
Rose testified that Chicago had been designated as a "primary source city" <sup>1</sup> for contraband narcotics. No evidence at all was offered to support this designation.



outside of the terminal Torres drew abreast of Westerbann and they began conversing while they waited in the taxi line.

Based on their observations of the defendants up to this point, Rose and his partner apparently concluded that there was a reasonable basis for suspecting that defendants were drug couriers. The agents therefore approached defendants, identified themselves, and asked the defendants where they had come from. The defendants truthfully replied that they had come from Chicago. Defendants were then asked for their tickets, which they produced and which confirmed that they had indeed arrived from Chicago. Both tickets were made out in defendants' own names. Rose noticed however that both tickets were paid for by Torres with an expired American Airlines credit card. Rose then asked both men for identification. Westerbann replied that he had no identification with him; Torres produced several valid forms of identification. At this time, Rose noticed needle tracks and tatoos (similar to those sometimes used by addicts to hide needle tracks) on Torres' hands. Torres appeared to Rose to be "shaking visibly."

Agent Rose testified that in order to remove Torres and Westerbann from blocking the taxi line, he then asked them to accompany him back into the terminal. He further testified that at that point he intended to inquire further into the fact that the tickets were paid for with an expired credit card and the fact that Westerbann had no identification. Rose however did nothing to check into the expired credit card once inside the terminal<sup>3</sup> but continued to press Westerbann concerning his lack of identification. In point of fact he asked Westerbann several times whether Westerbann had any identification and each time Westerbann replied in the negative. Despite these replies, Rose asked Westerbann if he had any identification in the bag he was carrying. According to Rose, Westerbann replied "You can look if you want." (Tr. 1.17). Rose testified that while he was looking through the bag, his partner again asked Westerbann for identification. In response, Westerbann reached into his pocket, withdrew what appeared to be a marijuana cigarette and then quickly replaced it.

When Agent Rose opened Westerbann's bag, he

3/

At one point in the testimony, Rose acknowledged that "I wasn't going to arrest him for that ticket, no." (Tr. 2.26).



found it stuffed with several white towels. He reached into the bag and beneath the towels he touched a paper bag which felt as if it contained a powdery substance. He testified that he knew that the paper did not contain identification. Rose nevertheless took the paper bag from the luggage, opened it and found a plastic bag inside which appeared to contain heroin. At that point both defendants were placed under arrest. The defendants were then taken to the Port Authority police office at LaGuardia<sup>4</sup> Airport where Torres was given his Miranda warnings/ and both defendants were searched. The search revealed that Torres was carrying an additional quantity of heroin and Westerbann was carrying marijuana. Subsequently, Torres made a statement detailing his involvement and that of Westerbann in the transportation of the heroin.

Defendants contend that the heroin seized must be suppressed since (1) the original stop of Torres and Westerbann violated the Fourth Amendment, and (2) Westerbann's consent to search his bag was limited, and in any

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<sup>4/</sup>

Because he had difficulty understanding English, Westerbann was not given his Miranda warnings until a Spanish speaking interpreter was available.

event not voluntarily given. They also contend that Torres' incriminating statement must be suppressed as "fruit of the poisonous tree."

The government initially contends that Torres lacks standing to object to evidence seized from Westerbann. In addition the government argues that the initial stop was a proper investigative stop in accordance with the rationale of Terry v. Ohio, 392 U.S. 1 (1968) and its progeny; furthermore the government contends that defendant Westerbann's consent to the search of his bag and defendant Torres' statement were both voluntarily given and purged the taint of any illegality which might have arisen out of the initial stop.

#### I. STANDING

The government argues that Torres lacks automatic standing to object to the seizure of the heroin from Westerbann on the grounds that none of the charges in the indictment include possession as an "essential" element of the crime charged. See Jones v. United States, 362 U.S. 257 (1960); Brown v. United States, 411 U.S. 223 (1973).



As to the first count, the government's con-  
tention is without merit.<sup>5</sup> One who is charged with aiding  
and abetting the commission of a substantive offense is  
in the same position for purposes of determining standing  
to suppress as one who is directly charged with the sub-  
stantive offense. United States v. Oates, Slip Op. 6389,  
6404 (2d Cir. June 3, 1977). The substantive crime  
charged in Count One includes possession as an essential  
element of the offense. See Mapp v. United States, 476  
F.2d 67 (2d Cir. 1973). Therefore Torres has automatic  
standing to object to the introduction of the heroin  
seized from Westerbann. See Jones v. United States, supra;  
Brown v. United States, supra.

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5/

Count One charges:

On or about the 29th day of March, 1977 within the  
Eastern District of New York, the defendants CARLOS  
WESTERBANN-MARTINEZ and LUIS ANGEL TORRES did knowingly  
and intentionally possess with intent to distribute ap-  
proximately one kilogram of heroin hydrochloride, a  
Schedule I narcotic drug controlled substance. (Title  
21, United States Code, Section 841(a)(1) and Title 18,  
United States Code, Section 2).

Torres does not, however, have automatic standing  
6  
on Count Two/ (the conspiracy count) to object to the seizure from Westerbann, since possession is neither a sufficient nor a necessary element of the conspiracy offense. United States v. Oates, supra, slip op., n. 6, 6405-6407; United States v. Galante, 547 F.2d 733 (2d Cir. 1976); United States v. Sacco, 436 F.2d 780 (2d Cir.), cert. denied, 404 U.S. 834 (1971). For the same reasons, it would appear that Torres lacks automatic standing  
7  
under Count Three/ (the Interstate Travel Act).

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6/

Count Two charges:

From on or about and between the 23rd day of March, 1977 and the 29th day of March, 1977, both dates being approximate and inclusive within the Eastern District of New York and elsewhere, the defendants CARLOS WESTERBANN-MARTINEZ and LUIS ANGEL TORRES did wilfully, knowingly and unlawfully conspire to distribute and possess with intent to distribute approximately one kilogram of heroin hydrochloride, a Schedule I narcotic drug controlled substance, in violation of Title 21, United States Code Section 841 (a)(1). (Title 21, United States Code Section 846).

7/

Count Three charges:

On or about March 29, 1977 within the Eastern District of New York and elsewhere, the defendants CARLOS WESTERBANN-MARTINEZ and LUIS ANGEL TORRES did wilfully and knowingly travel in interstate commerce from Chicago, State of Illinois to New York City, State of New York, with intent to promote, manage, establish, carry on, and facilitate the promotion, management, establishment and carrying on of an unlawful



Cf. United States v. Colacurcio, 499 F.2d 1401 (9th Cir. 1974) (where, however, unlike the charge in this case, the underlying act charged did not bear any relation whatsoever to a possessory offense).<sup>8</sup>/

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activity, said unlawful activity being the knowing and intentional possession with intent to distribute approximately one kilogram of heroin hydrochloride, a Schedule I narcotic drug controlled substance in violation of Title 21, United States Code, Section 841(a)(1), and thereafter to perform and attempt to perform acts to promote, manage, and carry on and facilitate the promotion, management, and carrying on of said unlawful activity. (Title 18, United States Code, Section 1952(a)(3) and Section 2).

8/

There may be persuasive reasons for finding automatic standing in this case under § 1952. Among other things a conviction under that section requires proof of performance or an attempt to perform the proscribed activity specified in the indictment. United States v. Prince, 529 F.2d 1108, 1111 (6th Cir.), reh. denied (1976). In the case now before this court, therefore, the indictment arguably requires proof of either (1) possession, or (2) attempted possession of heroin. Although the broad language in the statute speaks in terms of "promot[ing]" and "facilitat[ing]" the unlawful activity - crimes for which actual possession is arguably neither necessary nor sufficient - when the government's proof will establish actual possession as part of the crime that was committed, there are persuasive reasons for concluding that the defendant's automatic standing should not be defeated by the mere fact that the indictment superflously tracks the language of the statute. Since this court concludes that Torres has actual standing on Count Three, it is not necessary to resolve this issue.

Although he does not have automatic standing on those counts, defendant Torres does have actual standing on Counts Two and Three to object to the seizure. Standing to object to a search and seizure may be based upon presence at the time of the search. United States v. Galante, 547 F.2d 733, 739; cf. Brown v. United States, supra at 229, and there is no dispute that Torres was present during the search of Westerbann. The government argues, however, that since the search occurred in a public airline terminal, Torres had no reasonable expectation of privacy. This argument ignores the fact that the Fourth Amendment protects "people not places." Katz v. United States, 389 U.S. 347, 351 (1967). Constitutional protection of privacy under the Fourth Amendment is not lost "even in an area accessible to the public." Id. 351-352. The "inestimable right of personal security belongs as much to the citizen on the streets of our cities as to the homeowner closeted in his study to dispose of his secret affairs." Terry v. Ohio, supra, at 8-9.

Furthermore, Torres has actual standing on Counts Two and Three for other reasons. When Rose stopped Torres and Westerbann for questioning, he restrained their freedom to walk away, and thereby "seized" both defendants



within the meaning of the Fourth Amendment. Terry v. Ohio, supra at 16-19; United States v. Brignoni Ponce, 422 U.S. 873, 878 (1975); United States v. Chamblis, 425 F. Supp. 1330, 1332, (E.D. Mich. 1977); United States v. Pruss, 5-81244 (E.D. Mich. Jan. 14, 1976), aff'd \_\_\_\_ F.2d \_\_\_\_ (6th Cir. 1976).

Both Torres and Westerbann were "seized" simultaneously. That "seizure" was based to a large extent upon Agent Rose's interpretation of the interaction of Torres and Westerbann including what Rose thought to be their desire to avoid the appearance of being together in the terminal, followed by their conversation once outside the terminal. Both Torres and Westerbann were questioned together. And it was the search of Westerbann's bag and seizure of heroin therefrom, that led immediately and directly to Torres' arrest. It is clear that Rose did not view Torres and Westerbann individually or separately but rather collectively - in a certain sense he view them as a unit. Therefore, Torres was the "victim of an invasion of privacy," Jones v. United States, supra at 261; Alderman v. United States, 394 U.S. 165, 173 (1969), and therefore has standing to object to the "seizure" itself and the introduction into evidence of any "fruits of its

poisonous tree" including the heroin seized from Westerbann's bag. See Wong Sun v. United States, 371 U.S. 471 (1963).<sup>9</sup>/

## II. FOURTH AMENDMENT ISSUES

The mere fact that defendants were "seized" within the meaning of the Fourth Amendment does not, of course, automatically entitle them to a grant of their suppression motion. The Fourth Amendment does not prohibit all searches and seizures but merely unreasonable searches and seizures. Harris v. United States, 331 U.S. 145, 150 (1947). The Second Circuit Court of Appeals has recently articulated the factors to be considered in determining the reasonableness of an investigative stop:

9/

Because Torres has actual standing under Counts Two and Three it is not necessary to face the complex problem arising from a finding of no standing as to some counts, but finding standing as to others, and granting suppression. See United States v. Oates, supra, at 6466-7, n. 7; United States v. Braverman, Slip op. 2513, 2517, n. 3 (2d Cir. 1973); United States v. Galante, supra at 740, n. 13. Compare the majority opinion and the dissenting opinion (Hufstedler, J.) in United States v. Pruitt, 540 F.2d 995 (9th Cir.), reh. and reh. en banc denied (1976).



It is now axiomatic that a law enforcement officer has the power, indeed the obligation, to detain a person temporarily for the purpose of interrogating him if the officer reasonably suspects that the detainee has committed or is about to commit a crime. [citations omitted] To establish the constitutionality of the stop, however, the "officer [must be able to] point to specific and articulable facts which taken together with rational inferences from those facts, reasonably warrant that intrusion." [citations omitted] Inasmuch as "[t]he reasonableness of [the officer's] conduct must be determined by balancing the need for the stop against the gravity of the intrusion which the stop entailed," [citations omitted], it is readily apparent that the "specific and articulable facts" and the inferences that can be drawn from these facts relate to the need for the stop. "Need," in turn, depends on factors such as the seriousness of the offense and the likelihood of the detainee's involvement in the known or suspected criminal activity. [citations omitted] Obviously, if the offense is minor and there is substantial uncertainty that the detainee is involved, only a minimally intrusive stop would be proper. On the other hand, when the police officer knows or suspects that an offense with serious societal consequences is being committed and there is some reasonable possibility that the person he detains is involved, a more substantial detention is justified. Between these two extremes lie the great majority of cases; those in which the offense is minor, but there is strong suspicion that the detainee is involved, or those in which the offense is egregious but the suspicion that the prospective detainee is involved amounts to little more than a visceral feeling on the part of the police officer.

United States v. Oates, supra, at 6412-6413. The circumstances must be "viewed through the eyes of a reasonable

and cautious police officer on the scene guided by his own experience and training." United States v. Hall, 525 F.2d 857 (D.C. Cir. 1976). Despite the "inherent odiousness and gravity of the [heroin] offense<sup>10</sup>/ the agent must still rely on "specific and articulable facts" logically indicating the possibility that defendants were involved in

10/

Compare the need present in an airport search of a suspected heroin smuggler with the need present when air piracy is suspected:

As damnable as drug traffic is, its regulation involves the protection of no special public interests like those at play in airport security. Regulation of drug traffic is achieved through enforcement of laws adopted by Congress which are similar to laws prohibiting bank robbery, bribery, or conspiracy. Thus, the court perceives no fundamental public interest at stake in routine enforcement of the drug laws which calls for the development of rules unique to airport drug searches. Accordingly, the government's rights in these cases must be tested against basic Fourth Amendment principles rather than by rules derived from an air piracy context.

United States v. Van Lewis, 409 F. Supp. 535, 542 (E.D. Mich. 1976), rev'd on other grounds sub nom., United States v. McCaleb, 552 F.2d 717 (6th Cir. 1977).



narcotics trafficking. United States v. Oates, supra at 6413.

While the inquiry into "reasonable suspicion" must necessarily be pursued on a case-by-case basis, United States v. Ruiz-Estrella, 481 F.2d 723 (2d Cir. 1973), it will be helpful to examine the approach taken by the Second Circuit Court of Appeals in two recent cases - United States v. Oates, supra and United States v. Magda, supra.

The agent who made the stop in Oates had observed the defendant for a period of more than three hours on two consecutive days. In finding that the stop was permissible under Terry, the court relied on the following factors known to the agents prior to the stop:

(1) The agent was thoroughly familiar with the defendant's reputation as a major narcotics dealer (emphasis Court of Appeals);

(2) The defendant was apparently travelling from Detroit to New York with a person who was "obviously" a narcotics addict;

(3) After arriving in New York, both men then met a third person at the airport who was known personally

to the agent as "being involved in the drug culture";

(4) Neither of the men carried luggage;

(5) The men remained in New York for only nine hours (from 10 p.m. to 8 a.m. the next morning) returning to Detroit on a "virtually immediate" return flight;

(6) One of the men had distinct bulges in his clothing in the morning, although he had not had any such bulges the night before;

(7) At the airport the next morning the two men while waiting for the next flight remained apart and studiously avoided giving any appearance of knowing each other - despite the fact that, as the agent was aware, the two men did know each other (the previous evening the agent had observed them speak together in Detroit prior to flying to New York, they had flown to New York on the same flight, had rejoined in New York after the flight, had then resumed their conversation, and of course had re-appeared the next morning to take the same return flight);

(8) Both men gave the appearance of being nervous and jittery, which "in connection with the other circumstances" might reasonably indicate illegal conduct. United States v. Gates, supra, at 6416 (emphasis added).



The court was satisfied that the large number of inter-related factors was not coincidence, and their combination was sufficient to raise a reasonable suspicion in the agent's mind. United States v. Oates, supra, at 6417.

If the factual situation in Oates represents a clear example of reasonable suspicion, the decision in United States v. Magda probably represents the minimum interplay of elements needed to establish reasonable suspicion under Terry. See United States v. Magda, supra, at 759 (Motley, J., dissenting).

In Magda, a New York City policeman with eleven years experience (including 3-1/2 years as a foot patrolman and 1/2-year experience in the specific area involved) was patrolling an area notorious as a center for drug traffic. From a distance of about 35 feet he saw the defendant and another man exchange something. After the exchange the other man noticed the officer and rapidly left the scene. The defendant also left the scene, whereupon the policeman stopped him to inquire as to what he had seen. Magda claimed that nothing happened. When asked a second time, Magda admitted to buying a marijuana cigarette. He was then placed under arrest and searched.

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In upholding the search, the court relied on the exchange, the rapid departure of defendant's companion, the locality, and the very limited nature of the stop itself. United States v. Magda, supra, at 759.

Viewed in light of Oates and Magda the stop in this case was improper. The government argues (Memorandum of Law, p. 12) that the following factors, when viewed through the eyes of the agent meet the test of reasonable suspicion; especially in light of the presence of these factors in the "Drug Courier Profile":

- (1) defendants' arrival from a primary source city;
- (2) defendants' nervous scanning of the area;
- (3) defendants' failure to speak to one another as they proceeded down the corridor as if to create the impression they were not together, followed by a conversation between them immediately upon exiting the terminal;
- (4) defendants' failure to claim any luggage.

The "Drug Courier Profile" which Agent Rose allegedly relied upon in stopping Torres and Westerbann, is not a "talisman"; its use does not obviate the need for traditional analysis. United States v. Chamblis, 425



F. Supp. 1330 (E.D. Mich. 1977). Firstly, no evidence was offered in support of the accuracy of the profile. Secondly, the profile has a chameleon-like quality; it seems to change itself to fit the facts of each case. One agent candidly admitted that "the profile in a particular case consists of anything that arouses his suspicions." United States v. Chamblis, supra, at 1333.

Many of the factors alleged in other cases to be part of the drug courier profile were neither mentioned nor present in this case. Among those factors are: (1) making a phone call immediately after arriving at the airport, United States v. Chamblis, supra; United States v. Endia Allen, No. 6-80421 (E.D. Mich. Nov. 5, 1976); (2) exiting at a level of the airport where there is no access to public transportation, United States v. Chamblis, supra, (3) being the last person to deplane, United States v. Mendenhall, No. 6-80208 (E.D. Mich. Nov. 18, 1976); (4) changing planes or airlines en route without apparent justification, or taking a circuitous route, United States v. Mendenhall, supra; United States v. Daniels, No. 6-80613 (E.D. Mich. October 8, 1976); (5) entering a rest room for a brief period of time, United States v. Frost, No. 6-80842 (E.D. Mich. Sept. 30, 1976); (6) not having a

ticket folder, United States v. Tyronne Allen, No. 76-471 (E.D. La. September 17, 1976); (7) travelling under an alias, United States v. Tyronne Allen, supra; United States v. Endia Allen, supra; United States v. Van Lewis, 409 F. Supp. 535 (E.D. Mich. 1976), rev'd sub nom., United States v. McCaleb, 552 F.2d 717 (6th Cir. 1977); (8) not having an FAA required name tag on luggage, United States v. Tyronne Allen, supra; (9) possessing a large quantity of cash, United States v. Pruss, supra; (10) paying for a plane ticket with small currency, United States v. Endia Allen, supra; United States v. Van Lewis, supra; (11) using a false telephone number to make airline reservations, United States v. Endia Allen, supra; (12) meeting known drug dealers, United States v. Endia Allen, supra.

Agent Rose, in this case, specifically denied that being the last to deplane (see no. 3 above) and taking a circuitous route (see no. 4 above) were part of the profile (Tr. 2.9, 2.17). He had no knowledge whether the use of small demonination currency (see no. 10 above) was part of the profile (Tr. 2.6). On the other hand, while Agent Rose testified that being Hispanic was part of the profile, that factor was not mentioned in any of the other cases.



Giving the government the benefit of the doubt, this court must conclude that either the "Drug Courier Profile" is too amorphous and unreliable to be of any help, or that there is a tremendous lack of communication within the Drug Enforcement Administration as to the factors in the profile. In either event use of the words "drug courier profile," under these circumstances, adds nothing to the factors observed; those factors must rise to the level of reasonable suspicion - or fall to the level of a mere hunch - on their own. Cf. United States v. McCaleb, supra, at 720. In order to assess the combined impact of these factors it is essential to examine the factors individually.

1. Arrival from a primary source city.

Although Chicago has been classified as a primary source city, no evidence was introduced in support of that classification. It appears safe to assume that the overwhelming percentage of travelers from Chicago are not in any way connected with the heroin trade. Cf. United States v. Brignoni Ponce, supra, at 882:

We are confident that substantially all of the traffic in these cities is lawful and that relatively few of their residents have any connection

with the illegal entry and transportation of aliens.

Thus at most this factor would normally be an "add-on factor" which might have some slight meaning in the presence of other, stronger indicia of criminal activity. Whatever slight add-on value it might have normally, however, is even more diluted in this case. As noted before, Flight 492 originated in Chicago and stopped in Cincinatti before arriving in New York. Rose admitted at the hearing held by this court that prior to stopping Westerbann and Torres, he did not even know whether they had boarded the plane in the "primary source city" - Chicago - or whether they had boarded the plane in Cincinatti.

2. Nervous scanning of the area.

In describing his conclusion that defendants were looking about "nervously" Agent Rose testified:

When a person looks to see if somebody is there to pick them up, they pick them up right away. These people turned around and looked for people over and over again. They looked as though they were looking to see if they were watched.

(Tr. 1.34-1.35).

When pressed as to how the "look" would be different "if



you are looking for someone who is not there, like a person who is supposed to pick you up and is not there?" the agent admitted: "I can't really answer that." (Tr. 1.36 emphasis added). Agent Rose's testimony on this point is therefore far from conclusive. It is true that in United States v. Oates the court found that in connection with other factors known to an agent, a person's nervous and jittery behavior may contribute to a reasonable suspicion. United States v. Oates, supra at 6416. The circumstances in Oates, however, are vastly different from those present here.

Moreover, apparent nervousness in an airport is not necessarily a sign of suspicious behavior; it may result from an innate personality syndrome, or from a disorientation from fear of flying or from having disembarked at a strange airport. See United States v. Floyd, 418 F. Supp. 724, 728 (E.D. Mich. 1976). Although "it is certainly possible that a trained narcotics agent could distinguish between a passenger glancing around nervously to escape detection and one who is merely disoriented in disembarking at a strange airport," this court must conclude, in light of all the circumstances present here, including the equivocal testimony of Agent

Rose that "that distinction is not articulable enough to warrant an identification stop" without stronger corroborating factors than are present in this case. See United States v. Mico Rachelle Rogers, \_\_\_\_ F. Supp. \_\_\_\_, No. 6-80162 (E.D. Mich. July 15, 1976), at 14.

The danger in placing too much reliance on an agent's perception as to the nature of a person's attitude is that in the absence of stronger objective evidence than that present here, to do so would be to short-circuit the requirement of "specific and articulable facts and inferences therefrom to support an investigative stop." See Terry v. Ohio, supra. This court is not prepared to usher in the day in this country when, without stronger objective incriminatory evidence, any person may be subject to a police stop after arriving by plane in an airport merely because an agent subjectively concludes that repeated looking around is a manifestation of nervousness. It is not too difficult to see the eventual result of such a decision. When it becomes known that looking around will justify a conclusion of nervousness which in turn may justify an investigative stop, narcotics couriers will then deplane and proceed to their destinations without looking around. At that point, the



government will presumably argue that people who look straight ahead after deplaning are subject to investigative stops. Cf. United States v. Mallides, 473 F.2d 859 (9th Cir.), reh. denied (1973) (occupants of automobile were "sitting very erect" and "did not turn to look at the marked patrol car as it passed"), 473 F.2d, at 866; United States v. Himmelwright, 551 F.2d 991, 992, n. 1 (5th Cir. 1977) (agent's attention directed at defendant because she appeared "extremely calm"). If this result is eventually to occur, it will have to be based on the authority of another court; this court will not "rubber-stamp" the vague suspicion of nervousness in this case.

3. Defendants' failure to speak to one another as they proceeded down the corridor as if to create the impression that they were not together, followed by a conversation between them immediately upon exiting the terminal.

An attempt to create the false impression of not being with someone may under certain circumstances properly constitute a factor upon which reasonable suspicion may be based. United States v. Oates, supra, at 6415; United States v. Riggs, 474 F.2d 699 (2d Cir.), cert. denied, 414 U.S. 820 (1973); United States v. Fields, 458 F.2d 1194 (3d Cir. 1972), cert. denied, 412 U.S. 927

(1973). In Oates and Riggs, the suspects were "apparently avoiding" each other in a situation where they would normally be expected to be together - waiting in the same vicinity to board the same flight. Moreover, in both of those cases the agents had independent knowledge that they were together. In Fields the suspects were observed over a period of more than 30 minutes during which they avoided speaking.

The facts in this case are far different. Firstly, the agent did not have any prior knowledge that the two were together. (He had not previously seen them together as in Oates and Riggs, nor did he have any independent information as in Fields). He merely assumed that they were together because they were both dressed casually. It was not until they drew abreast and began talking outside the terminal that one could reasonably conclude that they might have been together (although the conversation could also have been between two strangers, one of whom, for example, was seeking information about ground transportation).

Assuming that the agent did have reason to suspect that defendants were travelling together before



he stopped them, the events which occurred hardly warrant the conclusion that they were avoiding each other. The total amount of time needed to transverse the terminal was 3-4 minutes (Tr. 2.41). There is nothing particularly suspicious about the fact that people who have taken a long trip do not speak to each other for 3-4 minutes. Nor is it necessarily suspicious that two people walking over a short distance do not walk side by side. Thus the agent's conclusion in this case is based on much weaker evidence than was present in Oates, Fields or Riggs. Although the behavior exhibited here may be slightly unusual in the absence of other factors the conclusion that the defendants attempted to create an impression of not being together, while entitled to some weight in light of the agent's experience, is certainly not compelling.

4. Failure to claim any baggage.

Although neither of the defendants claimed any baggage, Agent Rose acknowledged that Westerbann was carrying an overnight bag and Torres was carrying a garment bag. The overnight bag, moreover, as Rose's search later revealed, was not empty. Since Flight 492 was a morning flight from Chicago to New York and defendants may only

have been staying in New York overnight, there is nothing suspicious or unusual about the amount of luggage they were carrying. Cf. United States v. Floyd, supra, at 728; United States v. Chamblis, supra; United States v. Mico Rachelle Rogers, supra; United States v. Floyd, supra.

Having concluded that individually, the factors present here are not by themselves "specific and articulable" facts upon which to base a reasonable suspicion, the court must still determine whether, when viewed collectively, they amount to a reasonable suspicion.

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They do not. / Normally, nothing plus nothing equals nothing. Such is the case here.

In Magda, the factors present, although not individually sufficient to lead to a reasonable suspicion, synergistically combined to produce a reasonable suspicion.

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Although the agent apparently relied to some extent on the fact that defendants were Hispanic, the government did not, in its brief, press this point. In any event this factor does not tip the scales. Nor does the defendants' casual dress contribute toward a reasonable suspicion.



In Magda the agent viewed a specific act which, while arguably susceptible to innocent interpretation, was also arguably susceptible to a criminal interpretation. In light of the neighborhood and the actions of the suspect after seeing the policeman, the court found "specific and articulable facts" upon which to base a reasonable suspicion. In the case at bar, Rose did not observe any specific act whatsoever that might have been criminal; all he observed were certain secondary characteristics which appeared to him to be suspicious. He had no prior knowledge, nor did he recognize either of the defendants, cf. United States v. Oates, supra. In certain cases secondary characteristics or factors may be so unusual, e.g., Terry v. Ohio, supra, or so interrelated, e.g., United States v. Oates, supra, as to give rise to a founded suspicion. In the case at bar they were not. This court therefore concludes that the investigative stop of Torres and Westerbann unconstitutionally violated the Fourth Amendment rights of both men.<sup>12</sup> Cf. United

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In light of the conclusion that the stop itself was improper, this court need not reach the issue of the propriety of the "scope" of the stop. See Terry v. Ohio, supra, at 391-392. Under the facts of this case that issue is close. On one hand, both Westerbann and Torres truthfully answered the questions put to them, the tickets were



States v. McCaleb, 552 F.2d 717 (6th Cir. 1977); United States v. Chamblis, supra; United States v. Mico Rachelle Rogers, supra; United States v. Floyd, supra.

As a result of the illegal stop, the defendants argue that the heroin seized and the statement given by Torres must be suppressed as fruits of the poisonous tree. See Wong Sun v. United States, 371 U.S. 471 (1963); Brown v. Illinois, 422 U.S. 590 (1975).

### III. FRUITS OF THE POISONOUS TREE

The test in determining the admissibility of evidence garnered after illegal police actions is "whether granting establishment of the primary illegality, the evidence to which objection is made has been come at by exploitation of that illegality or instead by means

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correctly made out and Torres produced valid identification. On the other hand the tickets were paid for with an expired credit card (although Agent Rose testified that he was aware of no connection between tickets paid for with an expired credit card and drug couriers), Torres had needle marks on his hand (cf., however, United States v. Oates, supra, n. 11, at 6414: "Of course the 'need' for the stop decreases if the suspect is known as a user rather than a dealer."), and Westerbann was unable to produce identification.



sufficiently distinguishable to be purged of the primary taint", Wong Sun, supra, at 489. If the evidence is seized as a result of some independent act of free will, rather than as a result of an exploitation of illegal conduct, then it is admissible, 371 U.S. at 488.

1. Westerbann's consent

As to the seizure of the heroin, the government argues that Westerbann's consent to search is an intervening act of free will sufficient to "purge the primary taint of the unlawful invasion." Under the circumstances present here the government of course bears a "heavy burden of proof in establishing that the consent was the voluntary act of the arrestee and that it was not the fruit of the illegal arrest." United States v. Bazinet, 462 F.2d 982, 989-990 (8th Cir.), reh. denied, cert. denied sub nom., Knox v. United States, 409 U.S. 1010 (1972). A determination of voluntariness cannot be based upon the presence or absence of a single controlling factor, Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973); rather it must be based upon "the totality of the circumstances." Id. at 227.

The illegality of the stop, the removal of



defendants from one place to another, / Westerbann's difficulty in understanding English, the repetition of the request for identification four times, the failure to advise Westerbann of his rights, the limited consent by Westerbann to look in the bag for identification only, the agent's knowledge that the soft powdery item he removed from the bag did not contain identification (Tr. 2.34, 2.60), are all factors which militate against a finding of voluntariness. In a similar case, one court concluded its analysis of the voluntariness of a consent to search by reasoning that

[h]ad the stop itself been reasonable under the standards of the Fourth Amendment, the balance might yield a different result. To overcome illegal Fourth Amendment activity, the government must demonstrate something more than a grudging acquiescence to the insistence of the agents. United States v. Mico Rachelle Rogers, supra, \_\_\_\_ F. Supp. \_\_\_\_ (Memorandum Opinion at 16).

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Whether or not removal from one place to another amounts to an arrest or unjustifiable extension of the investigation, compare United States v. Oates, supra, at 6409 (nothing wrong in moving to a more convenient place) with United States v. Chamblis, supra, at 1335 (extension of nature and/or time of intrusion must be based on probable cause or consent), the removal can certainly be considered as one of the factors relating to voluntariness of consent.



In view of the circumstances present, this court concludes that the government has failed to meet its burden of proof as to voluntariness.

2. Torres' Statement

The government argues that Torres' confession was made after he had received and "intelligently waived" his Miranda rights. (Government's Memorandum of Law, p. 20). Miranda warnings may be sufficient to find voluntariness or waiver of Fifth Amendment rights; in a Fourth Amendment context, however, they are only one factor to be considered in determining whether a defendant's statement was sufficiently an act of free will to purge the taint of the illegal stop. See Brown v. Illinois, supra, at 602. Among the other factors to be considered are the temporal proximity of the arrest and confession, the presence of intervening circumstances, and the purpose or flagrancy of the official misconduct. Id. at 603-604. After reviewing the facts, this court concludes that Torres' statement was not sufficiently a product of defendant's free will to purge the taint of the illegal stop. The road to the statement from the stop "is both straight and uninterrupted," cf. United States v.

Ceccolini, 542 F.2d 136, 142 (2d Cir. 1976), and additionally a very short road time-wise. The statement must therefore be suppressed.

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The crime charged in this case is a serious crime with grave societal consequences. This court has great respect for those law enforcement officials who are charged with the difficult task of detecting and apprehending persons involved in the drug trade. But respect for, and appreciation of, the difficulty of the task cannot in any way diminish this court's duty to uphold the constitutional rights of all citizens. As Mr. Justice Stewart recently emphasized:

The pressures on . . . executive and judicial officers charged with the administration of criminal law are great . . . . But it is precisely the predictability of those pressures that makes imperative a resolute loyalty to the guarantees that the Constitution extends to us all.

Brewer v. Williams, \_\_\_\_ U.S. \_\_\_\_, Slip Op., at 18, No. 74-1263 (March 23, 1977).

The guarantees embodied in the Fourth Amendment are intended to shield the citizen from unwarranted in-



trusions into his privacy, Jones v. United States, 357 U.S. 493, 498 (1958), and possible violations must be subjected to close judicial scrutiny. Gilbert v. United States, 366 F.2d 923 (9th Cir. 1966), cert. denied, 388 U.S. 922 (1967). This court must therefore be sensitive to the requirement that guesses, hunches or prejudices not be substituted for a founded suspicion of criminal activity. Circumstances otherwise innocent, may, when viewed in combination, give rise to a reasonable suspicion. Compare Terry v. Ohio, supra; United States v. Oates, supra; United States v. Magda, supra; with Sibron v. State of New York, 392 U.S. 40 (1968); United States v. McCaleb, supra; United States v. Magda, supra (Motley, J., dissenting).

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In this case they do not./

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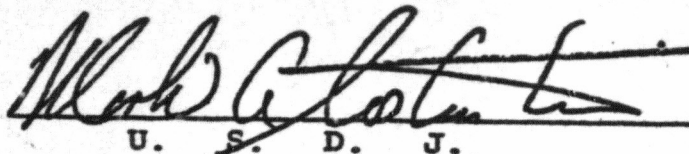
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In light of this court's determination, it is not necessary to reach defendants' other attacks upon the procedure employed here. In United States v. Mallides, 473 F.2d 859 (9th Cir.), reh. denied (1973) the court stated:

Neither the Supreme Court nor this court has ever upheld the legality of a detention based upon an officer's unsupported intuition, and we refuse to do so now. The stop and detention were illegal, and the fruit of the illegal conduct was inadmissible. It is unnecessary to explore the claimed overbreadth of interrogation or the trunk search.

473 F.2d, at 862.

The motions to suppress are granted. So ordered.

  
U. S. D. J.



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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

NOTICE OF APPEAL

- against -

77 CR 172

EDDIE NATAL RIQUELMY,  
CANDIDO NATAL RIQUELMY and  
FELIX LOPEZ,

Defendants.

FILED  
IN CLERK'S OFFICE  
U. S. DISTRICT COURT E.D. N.Y.

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★ SEP 1 1977 ★

S I R S :

TIME A.M. \_\_\_\_\_  
P.M. \_\_\_\_\_

PLEASE TAKE NOTICE that the United States of America hereby appeals to the United States Court of Appeals for the Second Circuit from an order of the United States District Court for the Eastern District of New York (Mark A. Constantino, J.) entered on August 3, 1977, which ordered the suppression, as against all three defendants, of physical evidence obtained from the defendants on March 17, 1977.

Dated: Brooklyn, New York  
September 1, 1977

Yours very truly,

DAVID G. TRAGER  
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By: Alvin A. Schall  
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P. 0771,337

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X

UNITED STATES OF AMERICA

- against -

EDDIE NATAL RIQUELMY,  
CANDIDO NATAL RIQUELMY and  
FELIX LOPEZ,

Defendants.

----- X

CERTIFICATION

(Pursuant to 18, U.S.C.  
§3731)

77 CR 172

The United States Attorney for the Eastern District of New York, by his duly appointed representative, hereby certifies to this District Court that the appeal taken by notice of appeal filed herein on September 1, 1977, from the order of the District Court granting the defendants' motions to suppress physical evidence obtained from the defendants is not taken for purpose of delay and that the evidence suppressed by the District Court constitutes substantial proof of facts material to this criminal prosecution.

Dated: Brooklyn, New York  
September 1, 1977

Yours, etc.

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